( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No.

ÆTNA INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ALLIANCE INSURANCE COMPANY OF PHILADELPHIA, ET AL., PETITIONERS,

vs.

BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

VOLUME V

INDEX.

	Original	Print
Exhibit 36—*List of fire insurance companies*	3317	3549
Exhibit 37—*Transcript of evidence before insurance commissioner in re application for 10% increase, &c.*	3334	3562
Testimony of E. G. Meier	3467	3659

Byrne & Sorenson (Inc.), Printers, Washington, D. C., June 12, 1926

	Original	Print
Testimony of Harold M. Hess (recalled)	3464	2686
Exhibits J, K, and L—Correspondence	3476	2695
Arguments of counsel	3482	2700
Index to exhibit volume	3539	2743
Exhibit A—Annual statement of American Central Fire Insurance Co., 1917	3540	2743
Exhibit B—Statement underwriting experience by classes, 1917	3591	2743
Exhibits C, D, E, F, G, H, and I—Statements, &c	3594	2743
Exhibits 12 to 35c—Correspondence and statistical tables	3609	2743
Exhibit 38—Statement fire insurance companies, five years, 1913-1917	3653	2743
Exhibit 39—Summary of comparison of Missouri experience, 1913-1917, all classes	3656	2743
Clerk's certificate to volume 4 (omitted in printing)	3661½	
Testimony of A. L. Harty	3662	2743
Charles G. Revelle (recalled)	3677	2754
Walter K. Chess	3743	2802
E. C. Meslow (recalled)	3842	2879
Defendant's Exhibit 36T—Investment exhibits from annual statements, &c., 1917-1921	3845	2882
Defendant's Exhibit 36U—Statement of total business	3849	2885
Defendant's Exhibit 36V—Statement of Missouri State business, &c	3852	2887
Defendant's Exhibit 36W—Statement of business from written premiums, &c	3853	2888
Defendant's Exhibit 36Z—Statement showing effect of increase and decrease on basis of total business	3857	2892
Testimony of A. S. Doty (recalled)	3858	2893
Report of John I. Williamson, referee	3869	2901
Supplemental report of referee	3879	2910
Plaintiffs' exceptions to report, &c	3885	2917
Exceptions of Hyde to report, &c	3889	2920
Judgment	3895	2925
Defendant's motion for new trial	3899	2927
Motion in arrest of judgment	3904	2931
Affidavit for appeal	3907	2934
Stipulation as to exhibits, &c	3909	2935
Order settling bill of exceptions	3910	2936
Stenographer's certificate to abstract	3910	2936

	Original	Print
Appellants' brief	3980	289
Respondent's brief	3991	295
Order of argument and submission	4003	298
Respondent's supplemental brief	4004	298
Judgment	4015	300
Opinion, White, J.	4018	300
Dissenting opinion, Ragland, J.	4057	303
Respondent's motion for rehearing	4071	304
Order overruling motion for rehearing	4111	307
Order granting stay of execution	4112	307
Respondent's praecipe for record	4114	307
Respondent's supplemental praecipe for record	4122	308
Appellants' praecipe for record	4124	308
Clerk's certificate (omitted in printing)	4126	
Order allowing certiorari		308

Judge Revelle: What year was that? 1916?
The Witness: 1914.
Judge Revelle: 1914?
The Witness: Yes, sir. $166,316,828.

General Gose: That was for the year 1914?
A. 1914.
Q. What was the combined surplus and capital for 1914?
A. $248,251,028.
Q. The earnings of 1914, namely, $14,001,211, represent what per cent upon the combined capital stock and surplus for the year 1914?
A. 5.6 per cent.
Q. The total combined capital stock of such companies was what for the year 1915?
A. $87,807,700.
Q. And the total net earnings of those companies for that year?
A. $7,749,748.
Q. What is that? The total net earnings of those companies?
A. Oh.
Q. For the year 1915?
A. Excuse me. $43,601,745.
Q. And those earnings represent what per cent upon the total capital stock?
A. 49.6%.
Q. For the year 1915?
A. 1915.
Q. What was the combined surplus of such companies at the beginning of 1915?
A. $166,691,623.
[fol. 3411] Q. What was the combined surplus and capital for that year?
A. $253,898,393.
Q. All the earnings of 1915, to wit, $43,601,745, was what per cent of the total combined capital stock and surplus in 1915?
A. 17.1.

Judge Revelle: 17.1?
A. Yes, sir.

General Gose: In the year 1916 what was the total combined capital stock of all such companies?

A. $98,620,830.

Q. And the total net earnings of those companies in that year were what?

A. $35,022,566.

Q. This represented what per cent upon the total capital stock of such companies for that year—1916?

A. 35.5.

Q. What was the combined surplus of such companies at the beginning of 1916?

A. $192,647,684.

Q. What was the combined surplus and capital for that year?

A. $291,268,514.

Q. The earnings in 1916——

Judge Revelle: Did you get the percentage on the capital and surplus?

General Gose: I am giving that.

Judge Revelle: Oh, pardon me. I thought you were going to another year. Pardon me.

General Gose: The earnings of 1916, $35,022,566, represents what per cent upon the combined capital stock and surplus for 1916?

A. 12%.

Judge Revelle: 12%?

[fol. 3412] A. 12%.

General Gose: What was the total combined capital stock of all such companies for the year 1917?

A. One hundred and four thousand——

Q. No.

A. $104,571,280.

Q. Now, read the question, will you please?

A. $104,571,280.

Q. What were the total net earnings for the year 1917?

A. $15,826,297.

Q. What per cent did such earnings represent upon the total capital stock of such companies?

A. 15.1.

Q. What was the combined surplus of such companies at the beginning of 1917?

A. $203,558,714.

Q. What was the combined surplus and capital for that year?

A. $308,129,994.

Q. The earnings of $15,826,297 for the year 1917 represent what per cent upon the combined capital stock and surplus for that year?

A. 5.1.

Q. What was the average per cent of earnings upon the capital stock of such companies for the five years from 1913 to 1917?

A. 29.98.

Judge Revelle: 98 hundredths?

A. 98 hundredths.

General Gose: What was the average per cent earned upon the combined capital stock and surplus for those years?

A. 8.77.

[fol. 3413] Q. I will ask you if any of these figures are arrived at by percentages?

A. They are not. They are taken from the gain and loss exhibits of the companies on page 9 of the annual statements.

Q. Did you take each individual company and take each individual report of such company for these different years, and take the figures from those reports?

A. I did.

Q. The figures have not been compiled from any printed document or any publication whatever, but from the original reports sworn to by the companies?

A. Taken from the Annual Statements of the companies filed with this Department for the five years.

Q. Now, then, I wish to direct your attention to the total net premiums received by the stock fire insurance companies represented by Relators. What was the total amount of the net premiums received by such companies from all business done?

A. In 1913?

Q. Every place?

A. In 1913?

Q. In the year 1913.

Judge Revelle: You are inquiring as to the United States, are you?

General Gose: Yes.

The Witness: $268,645,117.

General Gose: What was the total amount of the net premiums received by such companies from business done in the year 1913?

A. $8,125,891.

Q. The premiums received from Missouri business in the year 1913 represented what per cent of the total premiums received from all business in that year?

A. Three per cent.

[fol. 3414] Judge Revelle: Three per cent of the total of the United States?

A. Yes, sir.

Q. That is the year 1913?

A. 1913.

General Gose: Yes, 1913. You stated that in the year 1913 the capital stock of these companies was $80,666,000?

A. Correct.

Q. What would be the amount of the capital stock apportioned to Missouri if such apportionment were based upon the rate which the net premiums received for business done in Missouri in 1913 bore to the total net premiums received from all business done by such companies in Missouri in the year 1913?

A. $2,419,980.

Judge Revelle: What is that amount, Mr. Mack? Give me that again, will you please?

A. $2,419,980.

General Gose: You stated that the total combined capital and surplus of such companies for 1913 was $255,530,237?

A. That is correct.

Q. What was the surplus—capital and surplus to be apportioned to Missouri upon the same basis for the year 1913?

A. $7,665,907.

Judge Revelle: Seven what?

A. $7,665,907.

General Gose: What was the total amount of the net premiums of these companies from all business in the year 1914?

A. $283,445,688.

Q. Six hundred and what?

A. Six hundred and eighty-five.

[fol. 3415] Q. What was the total amount of the net premiums received by these companies from Missouri business in the year 1914?

A. $8,831,440.

Q. The premiums from Missouri business in 1914 represented what per cent of the total premiums received from all business in the year 1914?

A. 3.1.

Q. Now, taking the total capital stock of such companies for 1914, to-wit, $87,807,700——

A. No, that is the capital for 1915.

Q. Yes; $81,934,200 for the year 1914, what would be the amount of the capital s-ock apportioned to Missouri if such apportionment were based upon the rate which the net premiums received from business done in Missouri in 1914, bore to the total net premiums received from all business done by these companies in the year 1914?

A. $2,539,960.

Q. Upon the same basis what would be Missouri's part of the total combined capital and surplus for the year 1914?

A. $7,695,781.

Q. In the year 1915 what was the total amount of the net premiums received from these companies from all business done?

A. $298,312,179.

Q. What was the total amount of the net premiums received by these companies from business does in Missouri for that year, 1915?

A. $8,540,290.

Q. The Missouri premiums for the year 1915 represented what per cent of the total premiums received by these companies from all business during that year?

A. 2.86.

[fol. 3416] Judge Revelle: 2.86?

A. 2.86.

General Gose: The capital stock of such companies for the year 1915 was $87,807,700 I believe?

A. That is correct.

Q. Upon the same basis of apportionment what would be Missouri's pro rata part of the capital stock for the year 1915?

A. $2,511,300.

Q. And upon the same basis what would be Missouri's pro rata part of the total combined capital and surplus for the year 1915?

A. $7,261,494.

Q. The total amount of the net premiums received from such companies from all business done was what in the year 1916?

A. $345,599,824.

Q. The net premiums received from Missouri business in the year 1916 by these companies was what?

A. $9,743,602.

Q. These premiums received in 1916 represent what per cent of the total premiums received by these companies in that year from all business?

A. 2.82.

Judge Revelle: 2.82?

A. 2.82.

General Gose: The total combined capital stock of such companies for the year 1916 being $98,620,830, what would be the amount to be apportioned to Missouri, computed upon the same basis as heretofore mentioned, for the year 1916?

A. $2,781,107.

Q. When computed upon the same basis what would be Missouri's part of the total combined capital and surplus of these companies for the year 1916?

[fol. 3417] A. $8,213,772.

Q. The total net premiums received from all business done by these companies in the year 1917 was what?

A. $454,222,413.

Q. And the net premiums received by these companies from business done in Missouri in the year 1917 was what?

A. $11,599,192.

Q. These premiums for the year 1917 from Missouri business, represent what per cent of the total premiums for all business in that year?

A. 2.57.

Q. The capital stock of these companies for that year was $104,571,280?

A. That is correct.

Q. What amount would represent the sum to be apportioned to Missouri, taking the same basis as heretofore indicated?

A. Two million——

Q. Let me finish please—for the year 1917?

A. $2,687,381.

Q. And what would be Missouri's pro rata part of the total combined capital and surplus for the year 1917?

A. $7,918,940.

Q. Turning now to the experience of these companies in Missouri, let me ask you if you have estimated the net profit or loss of these companies from business done in Missouri in the years 1913 and 1914?

A. Yes, sir; I have.

Judge Revelle: That is the Missouri business alone, is it?

A. Yes, sir.

General Gose: What was the amount of the net premiums [fol. 3418] received by these companies from Missouri business in the year 1913?

A. $8,125,891.

Q. What were the "Other Earnings?"

A. $635,178.

Judge Revelle: Six hundred thirty-five what, Mr. Mc?

A. $635,178.

General Gose: That is for the year 1913?

A. 1913.

Q. What were the net losses paid in the year 1913?

A. $6,249,518.

Q. What were the expenses in the year 1913?

A. $3,331,566.

Q. What was the——

Judge Revelle: Wait until I get that figure. Three million what?

A. $3,331,566.

General Gose: What was the profit or loss in the year 1913 according to this estimate made by you?

A. It shows a loss of $820,015.

Q. What per cent does this loss represent upon the capital stock of such companies for the year 1913?

A. 33.9.

Q. What upon the capital and surplus?

A. 10.7.

Judge Revelle: May I ask, is that the percentage of loss figured for the apportionment of Missouri, or for the total——

A. For Missouri; the apportionment of Missouri, capital and surplus.

Q. Yes.

General Gose: All of these figures now relate exclusively to the experience in Missouri.

[fol. 3419] Judge Revelle: That is what I understand. And then in stating the percentage of loss to the capital you are using the same figures that you have detailed here as to the apportionment of capital and surplus to Missouri?

A. Yes, sir.

Judge Revelle: Yes. All right. Thirty-three and what?

A. 33.9 on capital; 10.7 on combined capital and surplus.

General Gose: What was the amount of the net premiums received by these companies from Missouri business in the year 1914?

A. $8,831,440.

Q. What were the "Other Earnings?"

A. $737,922.

Q. What were the net losses paid in the year 1914?

A. $5,782,417.

Q. What were the net losses paid in the year 1914?

A. $3,620,852.

Judge Revelle: Three what, Mr. Mc?
A. $3,620,852.
Judge Revelle: Thank you.

General Gose: What was the profit or loss in the year 1914 from this estimate?
A. $166,093 profit.

Judge Revelle: 166?
A. $166,093.

General Gose: What per cent does this profit represent upon the capital stock for the year 1914?
A. 6.54.
Q. What per cent does it represent upon the capital and surplus for the year 1914?
A. 2.15.
Q. Did the insurance companies file any reports showing [fol. 3420] their expenses or their earnings for the years 1913 and 1914?
A. They did not.
Q. They were requested by the insurance department to do so?
A. They were requested to do so after the passage of the present rating law.

Judge Revelle: Well, may I ask, that did not include the years 1913 and 1914?
A. They were requested——
Q. (Interrupting.) That was for the year 1915, was it not?
A. They were requested to furnish reports for five years preceding the passage of the law.

General Gose: The law provides for that.
A. The law provides for that.

Judge Revelle: But they were not requested the years 1915 and 1914 to do that; following the enactment of that law, they were?
A. Five years previous to the enactment of the law, which would cover 1913 and 1914.
Judge Revelle: Yes.

General Gose: How did you arrive at the expenses for the years 1913 and 1914?

A. The expenses were figured on a percentage basis. Now, let me explain just a little, if you will, in regard to these premiums. The premiums as reported in Table 5, which they have been using here, are in excess of the figures used here, for the reason that Judge Revelle I believe, when he was Superintendent, ruled that for the purposes of this report of underwriting experience by classes, the companies should report on the same basis that they made their return of premiums for taxation; that is, deducting the returned premiums, and premiums for reinsurance and [fol. 3421] companies authorized to do business in Missouri; consequently, in taking these premiums for use here in making this estimate, I went to the tax return schedules for 1913 and 1914 to get the premiums, so as to put it on the same basis as nearly as possible with 1915, 1916 and 1917, to which we had actual reports.

Judge Revelle: May I ask, Mr. McGee, doesn't that statement represent the net premium income of the company?

A. Yes, sir.

Judge Revelle: Yes.

A. And the expenses were figured on these premiums as forty-one per cent of the premiums. I believe it has been shown before that that average, where we have a definite report, is 40.6. I used 41 there in an effort to be fair with the companies, and went a little over the average expense where we have an actual report.

General Gose: Now, how did you arrive at the earnings for the years 1913 and 1914?

A. By taking the proportion which the Missouri premiums bear to the total premiums to obtain the amount of unearned premiums which should be apportioned to Missouri, and then use the same proportion in obtaining the amount of capital and surplus which should be apportioned to Missouri, and then compute interest on those two amounts at four per cent.

Judge Revelle: May I just, for my own information, ask Mr. McGee a question?

General Gose: Yes, sir.

Judge Revelle: Did you use your own calculation as to the apportionment of unearned premiums to Missouri, or did you use the figures that the company submitted?

[fol. 3422] A. I don't know as I understand you exactly, Judge.

Q. In determining what proportion of the unearned premium, say the gross unearned premium of the company, should be accredited to Missouri, did you make your own computation of that, or did you take the figures that the insurance companies submitted to the Insurance Department as to the apportionment of unearned premiums to Missouri?

A. They did not submit any apportionment, I think, in 1913 and 1914. They reported on page 2 of the Annual Statement I believe it is the amount of unearned premiums—I beg your pardon, on page 4 the total amount of unearned premiums. Now, in 1913 the Missouri premiums were three per cent of the total premiums received. I took three per cent of those unearned premiums and computed interest on it at four per cent.

Q. Well, now, I have forgotten, so I am asking this for my own information; in compliance with that provision of the statute as to reporting their experiences for 1913 and 1914, after the enactment of the 1915 law did they not make a statement of what the apportionment of unearned premiums to Missouri was for those years?

A. Very few of the companies did, Judge.

Q. The request was made for that, was it not?

A. The request was made and we got a rather mixed up report from some companies, and some companies, you remember, told us that they were utterly unable to make the report because their records had not been kept so they could classify them.

Q. Now, in your computation of unearned premiums to be accredited to Missouri, you simply used the premium [fol. 3423] income of Missouri as compared with the total premium income of the company, did you not?

A. Yes.

Q. You did not take into consideration, did you, that in Missouri perhaps there was less term business than there was in other states?

A. I couldn't consider it, because——

Q. I say you did not do that?

A. I did not.

Q. Now, to that extent, to the extent say the term business in Missouri is less percentage than the term business, the average term business in other states, your figures would not be correct, would they?

A. I am not putting these up as absolutely correct.

Q. Now, I am just trying to get, Mr. Mc., at the system you adopted in arriving at these figures. If, in point of fact, the term business of Missouri was a less percentage than the average term business of the companies' experience, then the unearned premium apportionment that you have made for Missouri for those years would be greater than it should be, wouldn't it?

A. Yes.

Q. That is true, isn't it?

A. Yes.

Judge Revelle: I just wanted to get at the manner in which you calculated that.

General Gose: Isn't it true that the insurance companies in all their reports of the credit to Missouri for interest upon unearned premiums, arrive at that by taking the percentage of the total amount of unearned premiums as you did?

A. That is exactly the way they claim to arrive at all those amounts.

Q. They never attempt in any year, do they, to separate [fol. 3424] the exact amount received by Missouri from term business or any other business on unearned premiums?

A. I don't think so. They never put it in a shape this department could tell them apart.

Judge Revelle: You wouldn't say none of them do that?

A. I say this, they never put it in a shape this department could tell them apart. Further than that I couldn't go.

Judge Revelle: Now, General, I don't want to interrupt your examination. I hope this is not at all objectionable to you.

General Gose: Go on. That is all right.

Judge Revelle: I am rather of the impression that some of the companies—I want to see whether you know whether that is true, or not, that some of the companies actually use their experience in a state with reference to their term business as a basis for that calculation, while possibly others use the apportionment plan; do you know whether that is true, or not?

A. No, I do not.

Q. And do you know whether or not there is any material difference in the term business in one State, as compared with the term business of another State?

A. I do not.

Judge Revelle: Very well.

General Gose: The only way that you could have that information would be for the companies to disclose it to you, would it not?

A. That would be the only way.

Q. And they never have done so in their reports, have they?

A. They have seemed rather careful not to.

Judge Revelle: Mr. McGee, they have never tried to in- [fol. 3425] dicate to you the manner in which they did that? In fact, you have never asked them upon their reports to indicate to you the manner in which they apportioned to Missouri its credit for unearned premiums, have you?

A. Not in the reports, no—yes——

Q. May I ask——

A. Just a minute.

The Commissioner: Just a moment.

The Witness: Let me correct that answer.

Judge Revelle: I want to get this clear.

The Commissioner: Wait a moment.

The Witness: If I am not mistaken there is on that blank a request for them to explain the method of computation of both the unearned premiums and the apportionment of interest on capital stock and surplus.

Judge Revelle: Now, may I ask whether or not in the event of failure to set out in total the manner of that apportionment, that it is often the practice of the department to request further information in that respect, or to complain that the report was incomplete?

A. Yes, sir. Just below there there is a request, "Give the method of computing these items."

Q. This question I asked you was, whether when the company filed its classified experience and did not indicate the manner in which it had made its apportionment, whether you had ever complained because of that failure, or had asked them to give you more detailed information as to that?

A. Very many times.

Q. And have you gotten that in any instance?

A. Not on your life.

Q. You have the correspondence in the Department as [fol. 3426] to the names of the companies you have asked that of, have you?

A. It is probably back there somewhere.

Q. Will you produce that for us, Mr. Mc?

A. I will, if I can find some of it.

General Gose: Now, Judge, I suggest that you allow me——

Judge Revelle: Very well. I beg your pardon.

General Gose: I will tell you why——

Judge Revelle: No explanation is necessary; it is entirely your right to proceed. Go right ahead.

General Gose: I am trying to get all these figures together so they will be in order in the record.

Mr. Leahy: Bunch them together. I see.

General Gose: Yes, sir. The only thing that you have estimated at all in the experiences of the years 1913 and 1914 were the earnings and the expenses, were they not, which were not reported by the companies?

A. Those were the two estimated items.

Q. The others are the figures taken from their—the exact figures taken from their sworn reports?

A. They are.

Q. Now, then, did they file reports for the years 1915, 1916 and 1917?

A. They did.

Q. In which they showed all of these items in sums—dollars and cents?

A. Yes, sir.

Q. Now, turn to the amount of net premiums received by these companies from Missouri business in the year 1915, what was the amount?

A. $8,540,290.

Q. What were the "Other earnings?"

A. Six hundred——

[fol. 3427] Q. Wait a minute, please. What were the other earnings accredited to Missouri in the year 1915?

A. $655,283.

Q. What were the losses paid in Missouri for the year 1915?

A. $5,383,511.

Q. What were the expenses apportioned to Missouri for the year 1915?

A. $3,610,163.

Q. What were the other earnings accredited to Missouri business in the year 1915?

A. $201,899.

Q. What per cent of the capital stock does this amount of earnings for 1915 represent?

A. 8%.

Q. What per cent of the combined capital stock and surplus does this amount of earnings represent for the year 1915?

A. 2.78%.

Q. What was the amount of net premiums received by the companies from Missouri business in the year 1916?

A. $9,743,602.

Q. What were the other ernings accredited to Missouri for the companies in that year?

A. $734,493.

Q. What were the losses paid in Missouri in that year?

A. $5,357,383.

Q. What were the Missouri expenses in the year 1916?

A. $3,974,737.

Q. And what was the profit of Missouri business in the year 1916?

A. $1,146,075.

[fol. 3428] Q. What per cent of the capital stock did this amount of earnings for 1916 represent?

A. 41.2%.

Q. What per cent of the combined capital stock and surplus did this amount of earnings for the year 1916 represent?

A. 13.9%.

Judge Revelle: Let me have those figures. You mean the profits for 1916 were what per cent of the capital?

A. 41.2%.

Q. And on the capital and surplus?

A. 13.9%.

General Gose: The amount of net premiums received from the companies for Missouri business in 1917 was what?

A. $11,599,192.

Q. What were the other earnings accredited by these companies to Missouri in that year?

A. $852,117.

Q. What were the losses charged to Missouri in that year?

A. $7,018,483.

Q. What were the expenses charged to Missouri in that year by the companies?

A. $4,530,258.

Q. What was the profit for the Missouri business in the year 1917?

A. $902,568.

Q. What per cent of the capital stock does this amount of earnings for 1917 represent?

A. 33.6%.

Q. What per cent of the combined capital stock and surplus does this amount of earnings from the Missouri business represent in 1917?

[fol. 3429] A. 11.4%.

Q. What is the average earning on Missouri business on the capital stock for the years 1915, 1916 and 1917?

A. For the last three years?

Q. Yes.

A. 27.6.

Q. What is the average earning in Missouri on the combined capital stock and surplus for those three years, 1915 to 1917?

A. 9.3%.

Q. What is the average earnings in Missouri for the years 1916 and 1917 on the capital stock?

A. 34.7%.

Q. What is the average earnings in Missouri for the years 1916 and 1917 on the combined capital stock and surplus?

A. 12.6%.

Q. Now, taking the years 1913 and 1914, in which you had to estimate the earnings and expenses because the companies had not filed reports showing these items, and also taking the years 1915 to 1917, which you have computed from the figures taken from the individual reports filed by the companies, what is the average earnings from Missouri for those five years on the capital stock?

A. 11.8%.

Q. What is it upon the combined capital stock and surplus?

A. 3.91%.

Q. What is it on the capital stock for the last four years, 1914 to 1917?

A. 22.33%.

Q. What per cent is it on the combined capital stock and surplus for these last four years, 1914 to 1917?

[fol. 3430] A. 7.55%.

Q. Now, in the year 1913 in which the great loss is shown, what if any, interruption of business was there in the State of Missouri in the year 1913?

A. Well, practically all of the companies quit business in Missouri for some five or six months, beginning about May, wasn't it, Judge?

Q. And extending from about May to about what time?

Judge Revelle: The 30th of April, General.

General Gose: 30th of April they quit?

Judge Revelle: Yes.

General Gose: And when did they resume business?

Judge: Revelle: Let's see; the 24th of August. Now, of course, that is not all the companies.

General Gose: No.

Judge Revelle: Just a part of them.

The Witness: I said practically all of them.

Judge Revelle: The dates were, the 30th of April the date of suspension, and the date of return was the 24th of August.

The Witness: I was thinking it was along about October they came back; I don't remember exactly.

Judge Revelle: The 24th of August, a very memorable day, I recall.

The Witness: I know they were celebrating when they came back.

General Gose: At the last hearing Mr. Leahy asked Mr. Chapman what credits were made to the State and Mr. Chapman made this answer, "We credit each State with the proportionate part of the total interest, earnings," question, "Whether it is on capital or surplus or premiums, or what?" "Exactly"; "Now, then, how much do you credit, [fol. 3431] for instance, Missouri with of that earned interest"? answer, "On the 1917 is the only figure I recall, about five per cent"; "Well, how do you determine that"? answer, "The premium income of Missouri was about five per cent of our total premium income," question, "And then you credit on your earnings all capital and surplus and premiums to each particular State the same per cent of those earnings as the premiums earned in that State bear to all the premiums"? answer, "To the total premium." Mr. McGee, Mr. Chapman is President of the American Central, is he not?

A. Yes, sir.

Q. Now, I will ask you if, having in mind that testimony of Mr. Chapman, you have estimated what the return on unearned premiums should be for Missouri in the year 1917 upon the report made by the American Central Insurance Company?

A. I have.

Q. What was the actual sum returned?

A. $9,863.

Q. What would be the sum that should be returned if computed upon a five per cent basis?

A. Five per cent basis it should be $7,813.

Q. Have you examined any of the other companies upon that same basis?

A. I compared just a few of them to ascertain whether or not Mr. Chapman had the right idea of the amount that they apportioned—eight or ten of them.

Q. Now, what per cent of its total business in the year 1917 is the Missouri business?

A. According to the figures in his annual statement it was 15 per cent.

Q. What should have been the return if computed upon the actual percentage which Missouri bears to his total business?

A. $23,439.

[fol. 3432] Q. And the actual return was how much?

A. $9,863.

Q. Now, have you examined any other companies with a view to apportioning their earnings upon the basis of the rate which the Missouri premiums—Missouri bears to their total business?

A. Which you mean? Along the lines given by Mr. Chapman there?

Q. And with what result?

A. Well, none of them tallied so far as I went. I went to about ten or a dozen companies; I thought that was sufficient to see that that was not the rule adopted by the companies.

Q. Well, give us a few companies—the names of a few companies?

A. Well, the Aetna, for instance, apportions to Missouri $26,476 of earnings; apportioned as Mr. Chapman states they were apportioned, it would amount to only $20,354.

Q. So that Aetna reports more than such a basis would afford?

A. Yes.

Q. Well, what is some of the experiences of some other companies?

A. I think the Agricultural reports $4,764; if apportioned as Mr. Chapman says it would be $6,070. The Alliance apportions $1,297; the other basis of apportionment would give $1,058. The American of Newark apportions $13,327; on the other basis it would give $3,322. The American Alliance apportions $9,682; on the other basis it would give $10,022. The American Druggists apportions

$224; on the other basis would give $3,215. The American Eagle apportions $9,322; on the other basis it would give $18,340. The Assurance Company of America apportions [fol. 3433] $1,159; on the other basis would give $447. The Automobile Insurance Company apportions $4,953; on the other basis would give $1,917. The Boston apportion- $3,838; the other apportionment gives $3,314.

Q. That will be sufficient, Mr. McGee.

A. It is very evident that the basis of making those computations is not very uniform.

Judge Revelle: Are you sure of that, Mr. McGee? Are you sure that follows from those figures?

A. Well, I think it does.

Judge Revelle: I don't think you are right.

General Gose: Now, Mr. McGee, if we take the three years for which we have the reports of the companies and exclude from such reports any credit for interest on capital stock and surplus, and include merely the interest on unearned premiums, what would be the experience of the companies in Missouri for these years, 1915, 1916 and 1917, as taken from their own book?

A. You want in there figures quoted here except the profit and loss?

Q. No, we can introduce that in evidence and show that.

A. In 1915 it would show a loss of $177,811.

Q. What per cent would that be upon the capital stock for that year?

A. Be a loss of 7.8 per cent.

Q. What per cent would it be of the capital stock and surplus for that year?

A. 2.44 per cent.

Q. Now, what for the year 1916?

A. 1916 would show a profit of $726,495, which would be 26.12 per cent on capital, or 8.84 per cent on capital and surplus. 1917 would show a profit of $461,538, which would be 17.7 per cent on capital, or 5.82 per cent on capital and surplus.

[fol. 3434] Q. And those figures represent the profits of the company where you exclude the credit which the company has given Missouri for interest on capital and surplus?

A. Yes, sir; this includes interest on unearned premiums only; no interest on capital and surplus is included.

Q. Now, what is the average earning for the companies in Missouri as shown by the figures taken from their sworn statement for these years, 1915, 1916 and 1917, not including any interest on capital and surplus which the companies accredited to Missouri in their reports?

A. It would show an average profit of $336,740, or 12.65 per cent on capital, or 4.32 per cent on capital and surplus.

Judge Revelle: You mean that is the underwriting experience, Mr. McGee?

A. These figures include interest on unearned premiums, but exclude interest on capital and surplus.

Mr. Leahy: Do they include anything for conflagrations?

A. I am not figuring on conflagrations on this part of it.

General Gose: In other words, in arriving at these figures you took the Missouri capital heretofore referred to for each of the years 1915, 1916 and 1917?

A. Yes, sir.

Q. You took the Missouri capital and surplus combined for these years?

A. The same as used in the other calculation.

Q. You took the Missouri premiums received in those years?

A. Yes, sir.

Q. And then you included the interest on unearned pre- [fol. 3435] miums accredited by the companies in their annual report?

A. Yes, sir.

Q. But you did not include the interest on capital and surplus accredited by the companies in their report?

A. No, that was omitted.

Judge Revelle: May I ask if you made that computation for five years?

A. No, I didn't. We took just the years that we had the actual record of, those three.

General Gose: I believe you may take the witness.

Cross-examination by Judge Revelle:

Q. Now, Mr. McGee, I understood you to say that it was quite evident from the figures that you gave as to the apportionment that the companies have made on their earn-

ings on unearned premiums that they had not apportioned it in the manner stated by Mr. Chapman?

A. No. Excuse me, those figures include unearned premiums and capital and surplus figures most.

Q. Now, let me ask you if you do not know the explanation of that apparent difference?

A. I do not.

Q. Now, let's take the American Central case; do you not know, as a matter of fact, that the American Central does an unusually large Missouri business in proportion to its total business?

A. That is true.

Q. Do you not know that it is the uniform practice of fire insurance companies to accept, say a big risk, a great deal more insurance than they can afford to carry on a single risk, and then reinsure a portion of that business; [fol. 3436] that is the general practice, is it not?

A. Yes.

Q. For instance, a company will accept a risk for one hundred thousand dollars, realizing that it individually cannot afford to carry a hundred thousand dollars on that risk, but it accepts it and reinsures from fifty to seventy-five per cent of that risk, does it not?

A. Yes.

Q. Now, do you not know that in the apportionment of unearned premiums the company that reinsures merely computes as its own business the amount that it carries itself, and then leaves it to the other company to carry the amount that it has reinsured as its business?

A. Perhaps that is correct.

Q. Now, isn't that a fact?

A. I don't know whether it is or not.

Q. Well, now, you take the American Central's case where upon the basis that Mr. Chapman mentioned there would be an apportionment of about five per cent of their business to Missouri, yet upon the total premium income from Missouri as compared with their aggregate premium income from the entire country is fifteen per cent. Do you not know, as a matter of fact, the American Central reinsures, the instant it gets a policy, fifty per cent of that policy, of one single company?

A. I know that they reinsure about fifty per cent; I don't know whether they do it this year, or next month.

Q. Hasn't the Insurance Department knowledge of a contract that the American Central has with the Commercial Union?

[fol. 3437] A. No, sir.

Q. That fifty per cent of all the business it writes is automatically taken over by that company? Doesn't the Insurance Department know that?

A. I don't know; there may be a contract of that kind on the files, I have never looked it up; I am not familiar with it myself; it may or may not.

Q. That occurred while I was here.

A. I know they do reinsure a great deal of their business in the Commercial Union.

Q. Isn't it a fact, that the American Central, in addition to the fifty per cent of its business it reinsures with the Commercial Union, doesn't it reinsure a portion of its business with other companies?

A. Some little, yes.

Q. Isn't it a fact, that on the average a company having a premium income that the American Central has, reinsures about two-thirds of its business?

A. I don't think so.

Q. You don't think it will average that?

A. No, sir.

Q. What would you think would be the average?

A. Well, I never considered that very much, Judge, but judging from the tax returns which show that as far as we have any record of it; at least, any record that I come in touch with, it doesn't show anything like that percentage, and as to what is insured in unauthorized companies, I have never come in contact with those figures.

Q. Exactly; your data here won't disclose that accurately because of the vast amount of business that is reinsured with unauthorized companies, and there is a great amount of it done, isn't there?

A. Oh, possibly there is.

Q. Now, wouldn't you say that if it is the practice of the [fol. 3438] companies to charge themselves merely with their net business, that is, the business that they carry themselves and don't reinsure, wouldn't you say that it is apparent from these figures where some companies charge themselves with merely earning on their unearned premiums, whatever their premium income from Missouri

would warrant, that that itself shows that that is the practice of the companies; that is that they charge themselves with the amount of business that they are actually carrying from a state, rather than the amount of business they write in the state?

A. Judge, my statement, as a uniformity, didn't refer solely to interest on unearned premiums; it varies just as much on capital and surplus that you put in there, and those are combined figures of the two.

Q. Exactly. That is what I am trying to get at though; that item as made is a combined item of earnings on unearned premiums, in addition to surplus, is it not?

A. My figures are there, but in the report they are not; they are separate.

Q. But what I am trying to arrive at, Mr. McGee, is while there is perhaps no difference in the figures in your department as to their earnings on capital and surplus, yet that the difference on what is accredited or charge to each company is accounted for by reason of the fact that one company will reinsure a greater portion of its business than another company does, and if they report their earnings according to the net risk carried, that would account for a difference, would it not?

A. That would account for some difference, but whether that would account for all the difference they show, I doubt very much.

[fol. 3439] Q. You would not say it doesn't?

A. I wouldn't say positively.

Q. You wouldn't say, for instance, that the American Central for the years that you have mentioned has not reinsured two-thirds of its business, would you?

A. No, I wouldn't say how much they reinsure because I don't know.

Q. And you wouldn't say as a matter of fact, and of your own knowledge, that the companies that do charge themselves with, say four or five thousand dollars, when the five per cent business would only charge them with nineteen hundred or two thousand dollars, that they have not charged themselves with business that they reinsure from some other company that had originally written the risk in Missouri, you would not say that, would you?

A. I would not without I have more direct evidence than I have.

Q. Well, that is a fact?

A. That is, I would not state it positively.

Q. That accounts for it.

A. But I do not believe that you can account for the difference in those figures on that proposition.

Q. Well, Mr. McGee, if you do not believe that will you explain why the Insurance Department accepts these reports without any examination, and without requiring the companies to report in detail more fully their experience in that matter?

A. Judge, because it is the hardest thing in the world to get them to give us what we do get. I have been up against that proposition ever since the law was put in effect and I find it the hardest thing in the world to get the information I ask for.

Q. Well, now, the Insurance Department has the author-[fol. 3440] ity, under the Rating Act, to not only call for, but compel the companies to submit any information it wants, has it not?

A. I judge they would have—that it has.

Q. Has the Insurance Department ever brought a company before it because of its failure to furnish information that it asked for?

A. It has not that I know of.

Q. Has it ever revoked or suspended the license of a single company for failure to comply with the demands of the Insurance Department in that respect?

A. No.

Q. It has not? Yet the Insurance Department has the authority to compel the submission of any facts or data that it wants in that respect?

A. It has.

Q. Now, in your figures have you taken into consideration the premium income of any of the mutual companies?

A. I have not; just the stock companies; that is all the Rating Law applies to.

Q. You mean, Mr. McGee, that you do not compel—you do not require mutual companies to file their schedules of rates?

A. No, sir. The may file their schedule of rates, but they do not file that report, "Underwriting Experience by Classes."

Q. The mutual companies are subject to the Rating Act, are they not, in most of its requirements?

A. Most of them; yes.

Q. Well, the thing I was getting at is that in your calculations you have not taken into consideration the premium income, or the losses paid, or the expenses, of any of the mutual companies?

A. Have not.

[fol. 3441] Q. Nor the receptacles?

A. Have not.

Q. Or any character of companies other than the strictly stock——

A. Stock companies.

Q. —stock companies? Now, with reference to the surplus of the companies that from year to year change, do you know, in point of fact, whether the years where the surplus has increased, that that increase represents earnings, or whether it represents the sale of stock at a value above par, or represents contributions by the stockholders?

A. I could not tell that definitely; no.

Q. You don't know that?

A. No.

Q. You do know, as a matter of fact, do you not, Mr. McGee, that it is the uniform practice of insurance companies now in selling their capital stock to sell it at a value in excess of the par value in order to create some surplus?

A. Yes, sir.

Q. In fact, you know that is absolutely necessary on the part of the fire insurance company, do you not?

A. Necessary if you have a surplus.

Q. Because of the reserves that are charged against them; and if they did not have that surplus every time they wrote a policy it would render them that much more insolvent, unless they had some surplus?

A. Certainly surplus is necessary to the business.

Q. Well, it is a fact, is it not, that every time an insurance company writes a policy, that after you consider the expense of getting that risk, paying the commission, paying the other expenses incident to it, then figuring the reserve on that policy, unless the company has some surplus [fol. 3442] that policy would show a loss in the financial impairment of that company, would it not?

A. I didn't exactly catch the tenor of that question, Judge.

Q. Well, take a new company, Mr. McGee, to illustrate what I am trying to bring out, take a new company that would start with a par capital, no surplus at all, at the end of the first year the business of that company would necessarily show an impaired capital, would it not?

A. Yes.

Q. Because of the reserves that are charged against it even though it had a profitable experience?

A. Yes.

Q. That is true, isn't it?

A. I think so.

Q. Do you know of any company that has been organized in the United States, say in the last ten years, or during the period that you have been connected with the Insurance Department, that has not sold its capital stock, whether it was original stock or increased stock, at a value in excess of the par value?

A. I have had very little occasion to look into that, Judge, and I am not informed on that.

Q. Now, you gave a detailed statement of the earnings of the companies throughout the United States; when the Missouri Department figures upon what is a reasonable rate in the State of Missouri does it take into consideration at all the experiences of the companies that are doing business in Missouri? That is, do you take into consideration the experiences of those same companies in the State of Arkansas?

A. I do not know. I am not a rate man and I do not [fol. 3443] know a thing in the world about their rates, how they start nor where they go.

Q. Mr. McGee, you do know, do you not, as a matter of general knowledge, that in approving or disapproving a rate, whether it be a basis rate or a specific rate, or whether it be a general increase or decrease in rate, that the Insurance Department of the State of Missouri considers only the Missouri experience?

A. That would be the natural inference, yes, but I do not know what they do consider.

Q. You would not say that the State of Missouri would give the insurance companies any benefit or credit in fixing

the Missouri rate because of the fact that they had lost say a half million dollars in the State of Arkansas?

A. Well, I would not think so.

Q. Now, the experiences of the companies that you have detailed here in states other than the State of Missouri are experiences that the Missouri Department will not consider in determining a rate, are they not?

A. I just told you I do not know what they consider in determining a rate. I have paid no attention in the world to the rating part of the proposition.

Q. In giving the combined capital and surplus of these companies, of course you have not, I assume, given any attention to what the people who own that stock have really paid for it?

A. I don't know what they paid for it.

Q. For instance, a company that has a capital, say of a million dollars and surplus of two million dollars, which upon the book value would show, say three dollars for each dollar of capital, in your figures you have not taken into consideration any other assets of the company, or the [fol. 3444] market value of that stock, or as to what the present stockholders have paid for the stock?

A. I fail to see what the present stockholders have paid for the stock has to do with the proposition.

Q. That is not my question. I am just asking you whether or not you took that into consideration at all?

A. Let me understand what you mean by market value.

Q. The value at which stocks sell; the value that the stockholders paid for it?

A. Well, then what do you mean by book value? Let's get this thing straight.

Q. By book value I mean the value that a computation of the capital and the surplus will disclose it to be worth?

A. All right. Well, I have shown you the figures there of the earnings on what might be termed the book value on the capital and the surplus. The market value we have not taken into consideration because we did not know it.

Q. No.

A. And that is the only——

Q. That is all I wanted to know, that you did not take into consideration the market value of the stock, or the price that the present stockholders paid for the stock?

A. No.

Q. Are you familiar, Mr. McGee, with the number of fire insurance companies that have retired from business in the last six years because of insolvency?

A. I am not.

Q. Now, take back in the year 1913—well, take the year [fol. 3445] 1914, do you remember what Missouri stock companies were in existence?

A. I think there were five at that time if I remember correctly.

Q. Can you from memory, Mr. McGee, state their names?

A. Well, there was the American Central, of St. Louis; the Equity Fire Insurance Company, of Kansas City; the Citizens Insurance Company, of St. Louis; Central Union I believe was a Kansas City company; Central Union Fire of Kansas City; and the Individual Underwriters', of St. Louis.

Q. Was the Individual Underwriter's—that was not a stock company, was it?

A. I don't recall. It was licensed in 1913 or 1914, I am not sure which. I don't know whether it was a stock company or not.

Q. I don't think it was. What happened to the Central Union of Kansas City?

A. It reinsured its business and retired.

Q. It became impaired, did it not, before it reinsured?

A. That was my understanding.

Q. In fact, the Missouri Department took charge of it, did it not?

A. I think.

Q. Because of the impairment of capital?

A. I am not very familiar with the Central Union; never was.

Q. That is the fact, because I took charge of it. What about the Underwriters' down at St. Louis; are they still in existence?

A. They were not licensed and I do not recall one thing as to how they went out of business.

[fol. 3446] Q. The other three companies you mentioned are still operating, are they?

A. They are still operating.

Q. The Citizens is a subsidary concern of the Hartford, is it not?

A. I am not sure what company. I rather think that it is controlled by one of the eastern companies.

Q. All of its stock?

A. No.

Q. Perhaps you don't know about that?

A. No, I don't know about that.

Q. Now, Mr. McGee, you take the year 1917, when I believe you stated that your computation showed an average earning on the capital and surplus of the companies of 5.1 per cent——

A. That was on the general business.

Q. The Missouri business?

A. In 1917?

Q. Yes; on capital and surplus?

A. That was the average on the general business, Judge, 5.1 per cent in 1917.

Q. What was the percentage of profit on the capital and surplus in Missouri?

A. 11.4 per cent.

Q. That is including the—you gave two different tables, I probably became confused.

A. Yes, I did.

Q. Is that the earnings on underwriting as well as the banking end of the business?

A. That includes interest on unearned premiums and interest on capital and surplus as reported by the companies for those years.

Q. Do you know what underwriting profit they had that year?

[fol. 3446a] A. Let me understand just exactly what you mean?

Q. By underwriting profit I mean the difference in their premiums collected, their losses paid, and their expenses paid, eliminating entirely earnings on capital, surplus and unearned premiums?

A. I haven't those figures before me.

Q. Well, will you refer to the figures that you gave as to the premium income, and then the losses paid and expenses for the year, and see about how that compares?

General Gose: What year is that now, Judge?

Judge Revelle: 1917.

The Witness: 1917.

Judge Revelle: I didn't get those.

The Witness: The figures I have, Judge, include——

General Gose: Get over here and take a piece of paper.

The Witness: The figures that I quoted from a little bit ago include the interest on unearned premiums, but omitted the interest earned on capital and surplus.

Judge Revelle: Now, Mr. McGee, have you made a computation of either the profits or the losses on strictly the premium income, the losses paid and the operating expenses, eliminating wholly every element of the banking end of the business? In other words, strictly underwriting experience?

A. Yes, I have a computation of that sort.

Q. Have you those figures available there?

A. 1917?

Q. Give me the first premium income for the year 1917?

A. $2,687,000.

Q. How much?

[fol. 3446b] A. Two million, six—oh, excuse me—premium income—that is capital—$11,599,192.

Q. Now, give me the losses paid?

A. I haven't them separate here. I can give them to you in a separate table. The losses paid were $7,018,483.

Q. And the expenses of operating?

A. The expenses were $4,530,258.

Q. Now, will you kindly total, if you have not already done so, the losses paid and the operating expenses?

A. Losses and expenses were $11,548,741.

Q. Then for that year there was just about an even break on the underwriting experience, wasn't there?

A. A $50,000 profit.

Q. A $50,000 profit?

A. $50,451.

Q. Now, give me the same figures for the year 1916?

A. 1916 the premiums were $9,743,602; losses and expenses were $9,332,020; leaving a profit of $411,582.

Q. Now, give me the same figures on the year 1915?

A. The premiums were $8,540,290; losses were $8,993,674; a loss of $453,384.

Q. Now, the figures for 1914?

A. I haven't them.

Q. You haven't them? Well, you, I believe, gave a detailed statement of the expenses and losses of 1914 and 1913 as reported by the company following the enactment of the 1915 law, did you not?

General Gose: He said he estimated it, Judge.

The Witness: I said I estimated that.

[fol. 3447] Judge Revelle: Well, will you give me your estimate on those?

A. 1913 the premiums were $8,125,891. I haven't those losses—yes, I have—losses and expenses were nine thousand—or $9,581,084.

Q. What was the profit or loss?

A. I haven't the figures for that in my calculation.

General Gose: Well, the figures are there; let him make the computation.

Judge Revelle: I wish you would figure that, Mr. Mc., if you will, for I have lots of confidence in your calculations.

(Witness figures.)

A. That leaves a loss for 1913 of $1,455,193.

Q. Well, now, Mr. McGee, you referred to the period during that year when the companies were out of the state; isn't it a fact that the year 1913 was a year when the fire losses were very heavy?

A. Apparently so from the reports.

Q. Well, now, isn't it also a fact that during the months that the companies were out, and when they were not collecting premiums, that they were not increasing their liability and their hazard by taking on new policies; they were not writing, in other words, any policies during that period at all?

A. No, not writing any policies at all.

Q. Now, give me the year of 1914, Mr. McGee, please?

A. Premiums in 1914 were $8,831,440; losses and expenses were $9,403,269; a loss of $571,829.

Q. Now, Mr. McGee, of course, if you want to claim expert witness fees, why, we will be willing to allow it, but now will you give me the total premium income for the years 1913, 1914, 1915, 1916 and 1917, from the Missouri business?

[fol. 3448] A. Total premium income for the five years you mean?

Q. Yes.

A. I haven't that with me.

Q. Will you make that computation for me from the figures that you have there for each year?

A. Lend me an adding machine, will you, Judge?

Q. If you would rather go back there, go right back to the adding machine. Now, tell me this, I want the premium income for those five years.

A. All right.

Q. And then I want the losses paid for those five years.

A. All right.

Q. And I want the expenses for those five years.

A. All right.

Q. In one table; and I want for the same period of five years the total—the premium income, together with other earnings for those five years. I want that totaled. And then a total of the premiums and the expenses, or losses I mean paid, and expenses, for that five years, which, of course, will be the same.

A. In other words, you want the total of all these figures I have got here?

Q. Yes, that is what I want.

(Witness leaves the stand, retires from the room, makes the additions requested and returns to the stand.)

A. These figures are getting so big I don't know whether I can read them or not. The total premiums for the five years are $46,840,415; the earnings $3,614,993.

Q. That is the earnings on unearned premiums, capital and surplus, is it?

A. Yes.

Q. Go ahead.

[fol. 3449] A. Losses paid, $29,791,312; the expenses are, $19,067,576; total of the premiums and earnings, $50,455,408; total of the losses and expenses, $48,858,788.

Q. That is a difference in the five years of what amount?

A. You mean between the totals?

Q. The two totals; yes.

A. A difference of $1,596,620.

Q. Now, for each year will you kindly divide that by five for me? (Witness figures.)

A. $319,324.

Q. Now, that is including earnings on capital, surplus, unearned premiums, and the total premium income?

A. Yes, sir.

Q. Now, you made a statement, Mr. McGee, of the apportionment of capital to Missouri ranging I believe on an average from seven to eight million dollars—about that; is that correct?

A. No, capital was a little over two million.

Q. Well, the capital and surplus?

A. Capital and surplus ranges about eight million.

Q. About eight million? Now, Mr. McGee, would you say after having had the insurance experience that you have had that you could put eight million dollars in the fire insurance business in the State of Missouri and let that capital take care of the fire insurance business in the State of Missouri?

General Gose: Oh, we object to that as calling for a conclusion.

The Witness: I don't know anything about that.

Judge Revelle: I am asking him as an experienced insurance man.

[fol. 3450] The Commissioner: He has not qualified him I suppose as yet.

Judge Revelle: How long have you been in the Insurance Department, Mr. McGee?

A. I have been in the Insurance Department for five years; five years last March.

Q. During that time you have had to do with the reports made by the insurance companies to the Insurance Department; examining those reports, making up tables and statistics in that connection, have you not?

A. Mostly tabulating figures. The Actuary passes on those reports.

Q. The Actuary doesn't have very much to do with the fire insurance business does he?

A. He passes on those annual statements—has since I have been here.

Q. Does the Actuary in the Insurance Department have any technical experience or connection with the fire insurance business?

A. Not that I know of.

Q. I am not limiting that to the present Actuary; I mean the Actuary generally, his business is entirely in connection with the life business, the technical features of it, isn't it, Mr. Mac.?

A. Supposed to be when it comes down to the real duties of an Actuary.

Q. Well, now, Mr. McGee, you gave the experiences for a period of three years and stated I believe that for the years 1915, 1916 and 1917 the profits of the companies, including their earnings on capital, surplus, unearned premiums, and underwriting experience average for that period of three years of about 9.4 per cent; is that correct?

A. 9.36, practically 4 per cent.

[fol. 3451] General Gose: That was for how many years?

Judge Reville: 1915, 1916 and 1917.

General Gose: Yes, that is right.

Judge Reville: I believe you stated that excluding interest on capital and surplus the earnings were 4.3 per cent?

A. 4.32; yes.

Q. 4.32?

A. Yes.

Q. Then the earnings of the companies on their underwriting experience and on unearned premiums would be 5.1 per cent?

A. I don't—I don't understand that question, Judge, exactly.

Q. Well, I will withdraw that. Strike that out, will you? I believe you stated that the interest earnings or unearned premiums was 4.3 per cent; is that right?

A. Repeat that again, Judge. I don't think that was my statement.

Q. Well, let me understand this. You needn't take this down. (Witness consults with counsel over figures.)

General Gose: He is talking about the earnings in the United States.

The Witness: I know he was.

General Gose: Judge, you have got the United States confused with Missouri.

Judge Revelle: Well, now, Mr. McGee, let me see if I am get this straight. I have here approximately the percentage on capital at 9.4—capital and surplus 9.4, including all the earnings of the company.

A. Yes.

Q. And then I have a percentage here of 4.3 earnings, in [fol. 3452] percentage to capital and surplus on everything except capital and surplus; is that correct?

General Gose: No.

The Witness: That is the total—that is the interest on unearned premiums as reported by the companies, not supposed to include any other item of interest earning.

Judge Revelle: Well, now, the difference in these two percentages is about 5.1 per cent, isn't it?

A. About that.

Q. Now, that is the period of three years. Now, then let's take the period of five years and what percentage do you show there of earnings on capital, surplus and unearned premiums?

A. For five years do you mean?

Q. Yes.

A. 3.91.

Q. 3.91?

A. Yes.

Q. Well, now, Mr. McGee, will you figure there for me, excluding interest on the capital and surplus what the profit or loss in percentage was for that period of five years?

General Gose: Better let him answer that in St. Louis, hadn't you, and give him time?

Judge Revelle: No, no, he can figure that from these figures he has here. I can. It is a loss of 1.2 per cent if you include merely the earnings on the unearned premiums.

General Gose: If you include it?

Judge Revelle: Yes. But excluding the earnings on capital and surplus for the period of five years—Mr. Mc., you can do that. I know what a worker Mc. is, he doesn't

even stop for meals. He can do that some other time, but we will let him stop for meals.

[fol. 3453] A. You just want the five years there?

Q. Yes.

A. Of the net premiums only?

Q. Yes.

General Gose: No, he wants unearned interest on unearned premiums.

Judge Revelle: I want to exclude for the period of five years the earnings on capital and surplus, the earnings on unearned premiums, I would like to have that in percentage to the capital and surplus, as well as the amount in dollars and cents.

General Gose: Not in percentages; you want the actual figures?

Judge Revelle: I want the actual figures and the percentage to capital and surplus. You need not compute it, Mr. Mc.; I think we are warranted in proceeding upon the assumption that in the absence of a contrary showing that the rate should be similar for the five years that it should be for the three years. So you just let it go, Mr. Mc.

A. All right.

Q. Mr. McGee, do you know what the average rate of interest that money was earning and realizing during the five-year period of 1913, 1914, 1915, 1916 and 1917, in businesses that are regarded as entirely safe?

A. I do not.

Q. You do not?

A. No.

Q. Well, do you, from your experience in this department and with the insurance business, know that money invested in the fire insurance business is subjected to a great many hazards that money invested in the ordinary channel of business is not subjected to?

A. No, I can't say that I know that.

[fol. 3454] Q. Do you mean to say that you would, at the same rate of interest, be willing to invest your money in the fire insurance company, the same as you would in a bank?

A. That would depend entirely upon the insurance company.

Q. Do you not know, as a matter of fact, that an insurance company today may be thoroughly solvent and a single fire may occur tonight that will entirely wipe out the capital and surplus and all assets of that company?

A. That is entirely possible.

Q. It has occurred on a great many occasions, has it not?

A. Well, not so very many, I don't think.

Q. Do you recall the conflagration in San Francisco?

A. Yes, sir.

Q. Wasn't it true then of practically every fire insurance company in the United States?

A. Crippled all of them more or less, yes.

Q. Wasn't it true of the Chicago conflagration?

A. I suppose so; that is too far back in ancient history for me.

Q. That has been true, Mr. McGee—is it not a fact that the fire insurance companies that have retired from business in the last twenty years have, as a general rule, been compelled to retire after a conflagration at some point or another where they have been caught? Hasn't that been the history of the fire insurance business?

A. I don't know. I can recall several that have retired without anything of that kind.

Q. Have retired merely because of their generally bad experience?

[fol. 3455] A. Yes.

Q. For doing too much business in states like Missouri, Kansas, Arkansas and Oklahoma?

A. And other states they were in—I don't know.

Q. Take the Central Union; do you know what states they do business in?

A. I do not.

Q. Well, do you know whether it is—or do you know whether it is or is not a fact that the cause of impairment and insolvency of the Central Union was that it being a Missouri company and when the other companies withdrew from this state it took on a particularly heavy line of Missouri business, and that line of business resulted in its insolvency?

A. I don't know that.
Q. Don't know that?
A. No.

Judge Revelle: I think that is all, Mr. Mac.

Redirect examination by General Gose:

General Gose (addressing reporter): Now, I wish you would mark these as our exhibits.

(Papers produced were here marked as Respondent's Exhibits C, D and E.)

General Gose: As a matter of fact, Mr. McGee, you did not calculate the capital and surplus at all did you, but took it as the companies placed it in their individual reports; did you not?

A. For which years do you mean? Oh, no, no, that was taken from the annual statements, that capital and surplus.

Judge Revelle: Now, let me understand; are you referring to the earnings on capital and surplus, or the amount of capital and surplus?

[fol. 3456] A. The amount of capital and surplus.

General Gose: You took also for the three years, 1915, 1916 and 1917, all figures which you wrote here and have testified to, from the actual individual sworn statements of the companies, did you not?

A. Either from the Annual Statements, or their report of "Underwriting Experience by Classes."

Q. Yes. Now, Judge Revelle asked you about the earnings for 1917 excluding all earnings whatsoever, except the mere premiums, and you stated that that was $50,000?

A. $50,451.

Q. Now, while no earnings of any character are considered in that other than the premiums received, we are charged here, are we not, with rents of buildings, with repairs on buildings, and all the general items which they include in home and departmental expenses?

A. Yes, sir; that is all included.

Q. We are also charged, are we not, with investment expenses?

A. I think that was included; yes.

Judge Revelle: Do you know that, Mr. McGee; that is included in that item?

A. That is a separate item in the report.

General Gose: It is all figured out.

A. In the report of "Underwriting Experience by Classes" that is made a separate item.

Judge Revelle: That is reported as a separate item and not in a general item?

A. But it is included in these expenses, is what he is after.

General Gose: And also included in that "Other Expenses," not enumerated?

[fol. 3457] A. Yes, sir; all those expenses are included in these figures.

Q. In other words, you are charged with subdivision 5 and 6 of "expenses" as appearing on the "Underwriting Experience by Classes?"

A. Yes, sir.

Q. As shown in Exhibit A. Now, in connection with his testimony, since Judge Revelle has gone into such detail, I wish to submit the tables from which he has testified today, in order to aid the Commissioner in the study of the testimony.

The Commissioner: Yes, sir.

General Gose: I now offer in evidence Exhibit C, Exhibit D and Exhibit E, and also Exhibit F.

(These exhibits now offered in evidence cannot be here copied into this record on account of the large sized paper necessary to correctly set forth same, but will be found in separate transcript attached hereto, entitled "Exhibit Volume" and on the following numbered pages thereof: Ex. C, page 29; Ex. D, page 31; Ex. E, page 33; and Ex. F, page 34, which said exhibits and Exhibit volume are hereby expressly referred to and made a part of this Bill of Exceptions.

General Gose: Mark this, and these.

(Papers here produced were marked as the Respondent's Exhibits G, H and I.)

General Gose: Now, Mr. McGee, I hand you Exhibit G and ask you what that is?

A. Recapitulation of Underwriting Experience by Classes for Missouri for the year ending December 31, 1915, as taken from the published report of the Insurance Department.

Q. And what is Exhibit H?

A. Underwriting Experience by Classes for Missouri for [fol. 3458] year ending December 31, 1916, as taken from the printed reports.

Q. I now hand you Exhibit I and ask you what that is?

A. Underwriting Experience by Classes for Missouri for year ending December 31, 1917.

(Exhibits G, H and I, offered at the same time Exhibits C, D, E and F were, and then identified, are to be found in the supplemental attached transcript) entitled "Exhibit Volume" and as follows: Ex. G, page 35; Ex. H, page 37; Ex. I, page 39 thereof, which said exhibit and Exhibit Volume are hereby expressly referred to and made a part of this Bill of Exceptions.

General Gose: That is all.

Recross-examination by Judge Revelle:

Q. Mr. McGee, I understand you to state that your compilation discloses an expense ratio of about 41 per cent.

A. That was the percentage that I used in making my estimates there for 1915 and 1914.

Q. And then you referred to the fact that our testimony had disclosed that as about 40.6 per cent?

A. Yes, sir.

Q. I believe.

A. Yes.

Q. Now, do you know that in our computation we did not take into consideration the investment expense, a separate item of which is made in the underwriting experience?

A. No, I didn't know where you made your figures from.

Q. Now, do you further know that the investment expense represents on an average of about one-half or—no, [fol. 3459] about three-tenths of one per cent of the premium income?

A. No. I don't know that I ever had occasion to look it up to see what proportion it represented.

Q. Well, that is what it is, and that accounts for the difference.

A. I suppose that your figures were made up from that report of "Underwriting Experience by Classes."

Q. You have not then compared the item of expense which is listed as "Investment Expense," you have not compared that with the total premium income to find out what proportion of any one per cent of the premium income that represents, have you?

A. No.

Judge Revelle: That is all.

General Gose: Mr. McGee, you did not compute the 41 per cent at all, did you? I mean by that, you didn't determine that 41 per cent was the correct percentage, did you?

A. I used that percentage for estimating that as it was about the percentage shown by the actual reports that we had.

General Gose: All right. That is all.

Mr. Leahy: How many more witness have you?

General Gose: I think I will close for the present.

Judge Revelle: I want to ask Mr. McGee one more question. Mr. McGee, have you any knowledge of the Insurance Department of this State, or any other state, either before or after making their examination—let me withdraw that question. The Insurance Department of this States makes examinations of every insurance company do- [fol. 3460] ing business in the State at certain periods, or whenever it determines that the examination should be necessary, does it not?

A. Either does that or agrees with the Department of other states to accept their examinations.

Q. I mean the Missouri companies, the Missouri Department examines those?

A. Yes, sir.

Q. And it is the practice among the Insurance Departments for the Departments of other state to accept the report of an examination made by the Missouri Department, is it not?

A. Yes, sir.

Q. The Missouri Department in return accepts the report or examination made by the departments of the State where the company is domiciled, does it not?

A. Yes, that is the custom among the companies.

Q. And those examinations that are made of the companies are very thorough, are they not?

A. They are, yes, sir.

Q. They go into the matter of expenses and expenditures, income, investments, the security supporting investments, and all those matters, do they not?

A. They go very thoroughly into all those, yes, sir.

Q. And the examination of the company is a pretty well long drawn out affair, is it not, because of its thoroughness?

A. Yes, sir.

Q. Well, now, has the Missouri Department, or any other department, to your knowledge, ever found any fault or made any criticism of the expense accounts or items of the fire insurance companies?

[fol. 3461] A. Judge, I am not familiar enough with the examinations to answer that question competently.

Q. You have never heard of any yourself, have you?

A. No.

Judge Revelle: That is all.

General Gose: Mr. McGee, the examination made by the Insurance Department doesn't include an examination as to what items are charged by the companies in their prorating to Missouri of the home and departmental expenses?

A. No, sir.

General Gose: That is all.

Judge Revelle: Well, it does include though, does it not, every item of expense that the company has been to? While, of course, the examination does not interrogate as to how that expense is apportioned to different States, yet the examination does go into every item of expense, does it not?

A. Yes.

Q. And do not the Commissioners require the companies whenever they claim credit for an expense to produce a voucher for that expense?

A. That is my understanding.

Q. And isn't a criticism of the company made if they fail to have the voucher to show for what purpose the expenditure has been made?

A. Yes.

Judge Revelle: That is all.

General Gose: But such examiners do not pass upon the question of what items shall be charged to Missouri pro rata, do they?

A. No.

General Gose: No. That is all.

Judge Revelle: I believe that is all, Mr. Mc.

[fol. 3462] Witness excused.

Thereupon, on said 1st day of October, 1918, there being no further evidence to be offered at this time, the hearing was adjourned until a date to be later fixed by agreement between the Commissioner and counsel.

In the Circuit Court of Cole County, Missouri

State of Missouri at the Relation of James A. Waterworth and Harold M. Hess, Relators,

vs.

A. L. Harty, Superintendent of the Insurance Department of the State of Missouri, Respondent

In the Matter of the Fifth Hearing of the Above-entitled Cause Before the Hon. Roy D. Williams, Commissioner

Thereafter, to-wit, on Thursday, the 24th day of October, 1918, said date having been agreed upon between counsel and the Commissioner since the adjournment of the last hearing in said cause, the further hearing of evidence in the above entitled action was resumed before Commissioner Roy D. Williams, at the office of the Attorney General in the Supreme Court Building in the City of Jefferson, State of Missouri; all the parties being present in person and by counsel that were present at all of the previous hearings

held herein, and the following proceedings were had, among others, as follows, to-wit:

The Commissioner: Are you ready to proceed?

General Gose: Yes.

Judge Revelle: We are.

[fol. 3463] Mr. Leahy: If you gentlemen have that admission agreed to now just let the reporter have it.

General Gose: Just let the record show that it is admitted that the Superintendent of Insurance, if present, would testify——

Judge Revelle: —that he has been engaged in the banking business for some years, being at the time of his appointment as Superintendent of Insurance president of a banking institution located at Bloomfield, Missouri; that commercial paper, including stocks, bonds——

Mr. Leahy (interrupting): Commercial papers and security.

Judge Revelle: Commercial papers and security, yes, that will catch it—have depreciated in value about ten per cent since the beginning—no, since the time that this country entered into the war.

Mr. Leahy: Since this country began hostilities.

Judge Revelle: Well.

Mr. Leahy: We may have entered into the activities of the war——

General McAllister: That would mean the declaration of war I think.

Mr. Leahy: Well, just say the declaration of war.

General McAllister: Yes.

Mr. Leahy: And that the rate of interest——

Judge Revelle (interrupting): Well, now, he didn't make that statement in the presence of Mr. McGee.

General McAllister: Well, you better put that in it.

Judge Revelle: Well, all right—that the rate of interest during the same time——

General McAllister: Yes.

Judge Revelle: —has increased about one per cent. That [fol. 3464] will be all we will want to offer. Now, we have some letters here I believe or statements——

Mr. Leahy: Before you come to those letters, we have certain photographs of a comparison of the figures as made

by Mr. McGee and Mr. Hess, which we would like to introduce for whatever they are worth. We believe that they will aid the Commissioner.

Judge Revelle: Well.

The Reporter: Shall I let the record show you rest? You were offering testimony at the close of the last hearing; shall I let the record show you rest at this time?

General Gose: Yes, let the record show we rest.

The Commissioner: Now, proceed with Mr. Hess.

Thereupon, the Relators, by their counsel, the Respondent having rested his case in chief, in order to further sustain the issues on their part to be sustained, made the following admissions and offered the following evidence, in rebuttal, as follows, to-wit:

HAROLD M. HESS, one of the Relators, now recalled, in rebuttal, upon examination testified as follows:

Direct examination by Judge Revelle:

Q. Mr. Hess, I hand you a photographic copy of what purports to be a summary of the experiences of the fire insurance companies in Missouri, showing such experiences both by the separate year, and then for a period of five years, and also for a period I believe of three years; is that correct?

A. Yes, sir.

Q. I will get you to explain in detail to the Commissioner [fol. 3465] just—I will ask that be marked as exhibit whatever number it is.

(Photographic copy referred to was here marked, for the purposes of identification, as the Relators Exhibit 38, and to be found on page 68 of "Exhibit Volume" hereto attached, which said exhibit and Exhibit Volume are hereby expressly referred to and made a part of this Bill of Exceptions.)

Q. Just explain in detail what that is and upon what it is predicated?

A. We have attempted to summarize here the figures introduced in my own testimony and the figures taken from the testimony of Mr. McGee, in order to see just how they

compare, and we have also included in this exhibit these figures in three ways; first, what I have called "The Underwriting Exhibit;" that is, simply taking into account as income only the premiums, and as out-go the losses and expenses, and have shown these figures separately, together with the profit or loss for each of the five years, 1914 to 1917, inclusive; the total for those five years—the average for those five years, the total for the past three years of that period, namely, 1915 to 1917, inclusive; and the average for those last three years, and figured what per cent this profit or loss amounted to as a percentage of premiums. Then the same figures have been given for underwriting results, plus interest on unearned premiums; that is, taking into account as income the premiums and the interest on unearned premiums, and as out-go the losses plus expenses, figuring the net profit or loss both in dollars and cents and as a percentage of premiums for each of the five years, and for the total of the five years, and the average for the five years, and the total of the three years, and the average of the three years, just as before. And then the third di-[fol. 3466] vision is an exhibit taking into account all interest from whatever source, which, of course, would include interest on capital stock and surplus as well as interest on unearned premiums, and adding to that all premiums is the total of income, and comparing that with the total, all added, comprise the losses and expenses, and figuring the net profit or loss for each of the five years, etc., both in amount and in percentage of premiums. Then for the convenience of the Commissioner I have taken and added to those percentages, or rather charged into those percentages, the five per cent conflagration charge, showing the result of those percentages with that five per cent charge included, as well as the result without that charge included, so that the information would be as complete as possible. On this same exhibit the totals of premiums received are given for each year separately and for the five years and for the three years, and the interest on unearned premiums, the interest on capital stock and surplus, and in the case of Mr. McGee's figures the earnings of what I believe he called "All earnings other than premiums."

Q. Now, Mr. Hess, will you state what, according to your figures, shows either the loss or percentage ratio for the

years 1913, 1914, 1915, 1916 and 1917, merely upon the underwriting end of the business?

A. According to our figures, and not taking into account the conflagration charge, the totals for the five years, or the average for the five years, is a loss of 3.7 per cent figuring on premium income as compared to losses and expenses and with the conflagration charge included.

Q. Well, I don't care for that because that is just a flat charge of five per cent.

A. Five per cent, yes, sir.

[fol. 3467] Q. 3.7 per cent of the premium income for the five-year period?

A. Yes, sir.

Q. Now, have you figured what percentage of loss that is on the capital and surplus apportioned to Missouri according to Mr. McGee's figures?

A. Well, that will come in that next exhibit which we propose to offer, Judge.

Q. Well.

A. This exhibit does not take into account capital and surplus at all.

The Commissioner: Just let me ask you; you say it does not take into account capital and surplus? I thought you said earnings.

A. It does take into account the earnings, but we have not figured any of the percentages as percentages on capital stock and surplus.

The Commission: Yes, I see. That is what I wanted to get at.

Judge Revelle: Now, what per cent of loss or profit do the figures submitted by the Insurance Department disclose on the same experience and same items for that period of five years?

A. A loss of 4.3 per cent of the premiums, which is a loss of .6 of one per cent greater than the figures I submitted.

Q. Now, that shows an underwriting loss according to your figures of 3.7, and according to the Department's figures of 4.3?

A. Yes, sir.

Q. And that is without adding the five per cent for the conflagration charge?

A. Yes, sir.

Q. Now, then I hand you another photographic copy [fol. 3468] which I shall ask that it be marked as Exhibit 39 and ask you to state what that represents.

(Said photographic copy was here marked as requested, Exhibit 39, on the part of the Relators, and is to be found on page No. 69 of attached "Exhibit Volume," which said exhibit and Exhibit Volume are hereby expressly referred to and made a part of this Bill of Exceptions.)

A. This exhibit is principally a summation of the figures given on the previous *or* exhibit immediatedly preceding, but it also contains Mr. McGee's figures of capital stock and surplus and the percentages of capital stock and surplus in all three ways; that is, for the underwriting only, and for the underwriting plus interest on unearned premiums, and the underwriting plus all earnings. The first conlumn shows the capital stock and surplus according to Mr. McGee's figures; the second column the premiums according to Mr. McGee's figures; and the third column contains his percentages of capital stock and surplus and his percentages of premiums for five years, and for each year separately, showing the profit or loss, as the case may be. And then in the next column, the fourth column, I have inserted for the comparison the percentage of premiums as shown by the figures that I submitted, the same years being on each line.

Q. Now, which of these exhibits disclose the percentage of loss or profit when you take into consideration both the underwriting experience and merely the earnings on unearned premiums?

A. They both show that.

Q. Well, now, give me then what the percentage of loss or profit for the five-year period according to your figures was when you taken into consideration both the underwriting experience, that is, the premium income, losses and ex- [fol. 3469] penses, as well as the earnings on unearned premiums? I want that for the five-year period.

A. Well, that is shown in Exhibit 38 in the next to the last column in the upper part of the page where the average loss for the five years is shown as $30,777, or .3 of one per cent of the premiums according to the figures I submitted.

Q. Now, what is the percentage loss for that period of five years when you add to the underwriting the earnings on unearned premiums according to your figures?

A. Those I just gave you; .3 of one per cent.

Q. Well, what is that?

A. .3 of one per cent.

Q. .3 of one per cent loss?

A. As compared to 3.7 per cent loss when you figure on underwriting only.

Q. Yes. Now, then what are the figures of the Insurance Department with reference to that, if they have figured them at all?

A. Those are shown immediately below on the same Exhibit 38 at a loss of .9 of one per cent.

Q. .9 of one per cent?

A. Yes, sir.

Q. Both of those are for the five-year period?

A. Yes, sir. Now, those same figures appear on Exhibit 39, in the column headed "Underwriting Plus Interest on Unearned Premiums." And there you will note that the Insurance Department's figures are given as a loss of 1.1 per cent of the capital stock and surplus, or a loss of .9 of one per cent of the premiums, while the figures I submitted——

Q. (Interrupting.) Just wait a moment, before you leave that—that is because of the fact that the premium income [fol. 3470] is in excess of the capital and surplus?

A. Yes, sir.

Q. All right.

A. The premium income and capital stock and surplus are shown in detail on that same exhibit in the first two columns for each year separately.

Q. Yes. What percentage of loss on capital and surplus do your figures show? You gave .3 of one per cent loss on income; now what percentage of capital and surplus is that?

A. Well, my figures show a loss of .3 of one per cent on the premiums.

Q. Yes, sir.

A. I have not figured those on capital stock and surplus, but it could be very easily done, and would show a slightly larger percentage than .3 of one per cent.

Q. In the state of Missouri the premium income, or rather the capital and surplus combined, to the premium income, is about as 4 to 5, is it not?

A. Approximately, yes, sir, as shown by that table there; "Capital Stock and Surplus," Exhibit 39, average for five years, $7,751,179, while the premiums were $9,368,033. In other words, the capital stock and surplus is to the premiums approximately as 8 is to 10.

Q. Now, Mr. Hess, have you figured, going back to the underwriting experience alone, have you figured what percentage of the capital and surplus this 3.7 percentage of loss on premium income amounts to?

A. No, sir.

Q. Have you figured what the 4.3 per cent, according to the Department's figures of loss on premium income, represents in percentage of capital and surplus?

[fol. 3471] A. Yes, sir; it is right alongside of there. It is 5.2 per cent.

Q. 5.2 per cent of the capital and surplus?

A. Yes, sir.

Q. Now, then, I will get you to state what the percentage of profit or loss is for the five-year period when you figured the underwriting experience as well as the earnings on unearned premiums, and as well as the earnings on capital and surplus, and any or all other earnings, as shown by your figures?

A. Those are shown on Exhibit 39 in the last two columns.

Q. Well, what is the percentage?

A. Mr. McGee's figures for the five years——

Q. (Interrupting.) Well, wait. Have you yours?

A. Yes, sir.

Q. Give me yours first?

A. Our figures for the five years were a profit of 3.9 per cent of the premiums.

Q. 3.9 per cent?

A. Yes, sir. While Mr. McGee's figures showed a profit of 3.4 per cent of the premiums.

Q. Now, wait, let me get that. Shows a profit of what?

A. 3.4 of the premiums, or 3.9 per cent of the capital stock and surplus pro-rated for Missouri.

Q. That is taking into consideration all earnings?

A. All earnings.

Mr. Leahy: But not taking into consideration the conflagration losses?

A. No.

Judge Revelle: None of these figures do?

A. No, sir.

Judge Revelle: I think that is all we have to ask.

General Gose: Are you through with him?

[fol. 3472] Judge Revelle: Yes, sir.

Mr. Leahy: The Attorney General asked for certain information with reference to companies of various classes; we have communicated with the four companies whose names were selected but have received responses from but three of them. Which four companies did you communicated with, Mr. Hess?

A. The American Central, and The Home, and The American Alliance, and I believe the fourth was The Northwestern National or The Milwaukee Mechanics, I don't remember which.

Mr. McGee: The Northwestern National.

Mr. Leahy: Did you receive an answer from the last named company?

Mr. Hess: No, sir.

Mr. Leahy: The other three answers you had photographed and the photographs are the papers you have now given to the Attorney-General, are they?

Mr. Hess: Yes, sir.

Mr. Leahy: That is all.

General Gose: You want to introduce these as exhibits? I mean as evidence?

Mr. Leahy: No. We have just given you those for your information.

Cross-examination by General Gose:

Q. Well, now, on Exhibits 38 and 39 what do these brackets show?

A. Those show that those are figures which were not directly included in Mr. McGee's testimony, and I didn't want to show as any figures given by Mr. McGee. Those that were not, for instance, on Exhibit 38 in column 2, at the bottom of the page, in the column headed, "Interest on

Unearned Premiums," I could not find from my transcript [fol. 3473] of the testimony that Mr. McGee had figured any interest on unearned premiums for the years 1913 and 1914, so that in figuring interest on unearned premiums for those two years I simply took Mr. McGee's average for the last three years, 1915, 1916 and 1917, which was 3.4 per cent of the premiums and figured 3.4 per cent of the premiums for 1913 and 1914, and the same percentage of the premiums for 1914, or I believe I said 1914, and inserted them in brackets and noted 3.4 per cent so it would be just as plain as possible. And the brackets in the next column headed, "Interest on Capital Stock and Surplus," you will note cover for the years 1913 and 1914, and the total for the five years, and the reason for that is that I could not figure from Mr. McGee's testimony—I couldn't see that he had made that compilation, but I simply made the compilation myself from the figures that he had submitted, using that ratio as before, and including them in brackets.

Q. Now, in your underwriting exhibit did you go to the original report of the company and take their experience from underwriting as reported by them?

A. I used Mr. McGee's figures.

Q. Mr. McGee did not make any report on the underwriting experience alone, did he?

A. Yes, sir.

Mr. McGee: Yes.

General Gose: That is taken from Exhibit F, is it, where the report is on losses and expenses and premiums and interest on unearned premiums, but does not include anything on capital stock and surplus?

A. And it does not include interest on unearned premiums either. It just figures premiums on one side as against loss and expense on the other side.

Q. Yes.

[fol. 3474] A. Just the underwriting.

Q. Yes.

A. And you will note that I have included the figures for 1913 and 1914 in brackets to show that those figures were not included in Mr. McGee's testimony. His testimony covered only the last three years.

Q. Now, your percentages are, for instance, not—your percentages are on the premiums?

A. In the case of our figures they are percentages of the premiums we figured, and in the case of Mr. McGee's figures they are percentages of the premiums without figuring——

Q. (Interrupting.) Mr. McGee did not figure any percentages on premiums, did he?

A. No, sir; but he gave the premiums.

Q. So Mr. McGee has no figures whatever of percentages,—loss or gain according to percentages on the premiums?

A. No, sir.

Q. That is what I mean.

A. No, sir; but you understand, of course, in Mr. McGee's figures he gave both the capital stock and surplus and the premiums.

Q. Yes.

A. And the profit and loss.

Q. Yes. But all his figuring and percentages was figures of percentages of profit or loss upon capital stock and upon capital stock and surplus combined, wasn't it?

A. Yes, sir.

Q. Well.

A. And in Exhibit 39 I have included Mr. McGee's figures on capital stock and surplus right alongside of the corresponding figures on premiums.

Q. I understand; but your final summary is the per-[fol. 3475] centage of gain or loss according to premiums, and not of capital stock and surplus?

A. The final summary I would call Exhibit 39, which includes them both—this smaller sheet.

General Gose: Well, we can tell by comparison by Mr. McGee what it is. Now, you say you gentlemen do not want to introduce those letters?

Judge Revelle: It doesn't make a particle of difference to us, Judge. We are not going to object to them at all.

General Gose: Mark these then.

(Said letters referred to were here marked as Respondent's Exhibits J, K and L, for the purpose of identification.)

General Gose: Now, Mr. Hess, we asked for the insurance companies to produce certain information, particularly a detailed statement showing how they arrived at the pro-

portionate part which Missouri paid of all the underwriting—no, of all the home and departmental expenses; have they furnished you that information?

A. Three companies have; The American Central, and The Home, and The American Alliance.

Q. I hand you Exhibits—I want to introduce those in connection with the cross-examination of this witness—I hand you now Exhibits J, K and L, and ask you if that is their explanation of the information which we asked for?

A. Yes, sir.

General Gose: Now, in cross-examination of this witness I wish to introduce these Exhibits, J, K and L.

(Said Exhibits J, K and L, now offered in evidence by respondent, being photographic copies of letters, appear in the words and figures following, to-wit):

[fol. 3476] EXHIBIT J

"American Central Insurance Company in Saint Louis

Received Oct. 11, 1918. H. M. Hess.

St. Louis, October 11, 1918.

Messrs. Waterworth & Hess, Missouri Inspection Bureau, Pierce Building, Saint Louis, Missouri.

Re Underwriting Experience by Classes—1917

GENTLEMEN: We are in receipt of your valued favor of the 7th instant with reference to statement of underwriting experience by classes for the year 1917 which was filed by this Company with the Missouri Insurance Department, and note your special reference to Item 5, Proportion of Home and Departmental Expenses. In regard to the figures shown on Division (a), Item 5, we would state that we arrive at these figures by taking the following items from our annual statement, page 3:

Disbursements

Item 8 Section (c) Executive Trav. Ex.	$806 43
Item 9 Salaries and Fees	51,589 84
Item 10 Rents	11,334 47
Item 11 Furniture and Fixtures	1,510 21
Item 12 Maps	3,361 12
Item 13 Inspections and Surveys	34,014 78
[fol. 3477] Item 14 Federal Tax	2,458 19
Item 15 Taxes	70,963 93
Item 16 Postage, Telegraph and Exchange	12,474 86
Item 17 Legal Expense	108 28
Item 18 Adv., Printing and Stationery	20,563 95
Item 20 Miscellaneous Expense	1,215 29
	$209,501 35

Deduct specific Missouri charges as shown on Underwriting Exhibit under Expense:

Item 3 Taxes paid in Mo	12,301 11	
Item 4 Rating Bureau, etc	2,857 19	
		15,158 30
Balance		$194,343 05

This was the total of our general expenses. Ratio of the Missouri premiums to our total premiums was 6.30% plus. Taking that proportion of the above amount would give us $12,251.55 as shown under Section (a), Item 5—Expenses.

Yours very truly, O. G. Toles, General Auditor."

Exhibit K

The Home Insurance Company

Elbridge G. Snow, President; Frederick C. Buswell, Vice-President; Clarence A. Ludlem, Vice-President; Charles L. Tyner, Vice-Pres. and Secretary; Henry J. Ferris, Secretary; Wilfred Kurth, Secretary; Howard P. Moore, [fol. 3478] Asst. Secretary; Vincent P. Wyatt, Asst. Secretary; John A. Campbell, Asst. Secretary; George A. Clarke, Asst. Secretary; William L. Dennis, Asst. Secretary

56 Cedar Street

Organized 1853. Cash Capital: $60,000,000

Received Oct. 18, 1918. H. M. Hess.

New York, Oct. 16, 1918.

Messrs. Waterworth & Hess, Pierce Building, St. Louis, Mo.

Gentlemen: We duly received your favor of the 7th inst., headed "Underwriting Experience by Classes for 1917," and beg to advise as follows:

Our expenses for 1917, taking into consideration all classes of business and all localities, were 34.31% of our premiums. Our Missouri premiums for 1917 amounted to $888,758, and you will readily see that 34.31% of $888,758 is $304,932.87. Our actual expenses for the State of Missouri, 1917, as indicated in the statement filed with the Insurance Department, were as follows:

Commissions	$193,895 35
Salaries and expenses paid to agents and adjusters	24,436 45
Taxes, licenses and fees	17,465 28
Rating Bureau Inspections, surveys, etc	9,545 37

The aggregate of these actual expenses is $245,342.45, and deducting this aggregate from $304,932.87, the estimate given above, we have $59,590.42, as set forth in our statement to the Department. This sum of $59,590.42

[fol. 3479] would be more properly described as, Overhead or Administrative Expenses.

Trusting this will clarify the matter, we remain

Yours truly, J. O. Campbell, Asst. Secretary."

Exhibit L

"American Alliance Insurance Company, New York

Walter H. Sage, General Manager; Ingram and Leach, Managers; Walter E. Miller, Asst. Manager

Western Department, 76 West Monroe St., Chicago

October 8, 1918.

Received Oct. 9, 1918. H. M. Hess.

Messrs. Waterworth & Hess, Managers, 1330-1341 Pierce Bldg., St. Louis, Mo.

Underwriting Experience by Classes for 1917

Gentlemen: We have your circular letter of the 7th inst., advising us that the Attorney-General is evidently not entirely satisfied with statements made on our behalf as to the method used in figuring and the charges included in Item 5 of Underwriting Experience by Classes at the bottom of the page entitled "Proportion of Home and Department Expenses" a. Underwriting Expenses. b. Investment Expenses.

[fol. 3480] Referring to the second paragraph of your letter will say that we reported

a. Underwriting Expenses	$6,662 46
and b. Investment Expenses	196 25
Total	$6,858 71

These figures were arrived at by prorating for Missouri the same proportion of the company's expenses that Missouri premiums bore to the total premiums, the ratio being 33 9-10% on Missouri premiums.

This ratio in all probability is too low because the expenses of doing business for the American Alliance in Mis-

souri is greater owing to heavy expense in the cities of St. Louis and Kansas City in the matter of fire patrol service, commissions, and other expenses not common in most of the other States.

The amount of total expenses was furnished us by the home office and we have no information here that will give in detail the amounts of the individual items mentioned in paragraph 3 of your letter. If we were able to go into such detail we believe our actual expense on Missouri business would be nearer 40% than 33%, so there is a margin in our statement of at least 5 or 6% against us.

Trusting this information will satisfy your needs, we are

Very truly yours, Ingram and Leach, Managers."

JCL-1.

General Gose: I believe that is all.

Judge Revelle: Is that all?

General Gose: Yes.

Judge Revelle: Well, we have nothing more. Just one [fol. 3481] question, Mr. Hess—I think perhaps that is already clear——

Mr. Leahy: I think you might have this witness show that he was asked to communicate with four companies, and that he did it.

Judge Revelle: He has already stated that I believe, that he communicated with four and only received replies from three.

Mr. Hess: Yes, sir.

Judge Revelle: One thing I wanted to ask you about, Mr. Hess; in this case where Mr. McGee gave a percentage of either loss or of profit based upon capital and surplus and not upon premium income, and where you have submitted figures showing what the percentage, according to his figures, is of premium income, you took the figures that he gave and merely from those figures made the computation of what the percentage was, did you?

Mr. Hess: Yes, sir.

Judge Revelle: That is all. That is all the evidence that we have.

The Commissioner: Have you anything further?

General Gose: Mr. McGee wishes to make one statement into the record.

The Commissioner: Very well.

Thereupon, the respondent, by his counsel, the relators having rested their case in rebuttal, in order to further maintain the issues on his part to be maintained, offered the following evidence, in rebuttal, as follows, to-wit:

E. G. McGee, recalled by the respondent, in rebuttal, upon examination testified as follows, to-wit:

General Gose: Just make that statement into the record.

The Witness: There is an apparent discrepancy in the [fol. 3482] total shown by the figures which I gave in my testimony at the last hearing and the printed reports of underwriting experience which were filed as exhibits. This difference in totals is caused by the fact that I used the figures of the companies which are now licensed only, while the figures in the printed report include some companies which were formerly licensed but not now licensed and not doing business in Missouri. I think that will explain that.

General Gose: That is all.

Witness excused.

The Commissioner: As I understand it you are now all through with your evidence?

Judge Revelle: We are.

General Gose: Yes, sir.

And this was all of the evidence offered, heard, submitted and received on the hearing of the above entitled matter before the Commissioner.

General Gose: Well, sir, now we are at your disposal. You wanted to argue this case before you went to war; we are ready to hear you.

Judge Revelle: That is very kind of you, because my country is calling.

Thereupon, to-wit, on said 24th day of October, 1918, all of the evidence having been offered and the hearing closed for the purposes of the introduction of evidence, counsel for the relators and for the respondent argued said cause before the Commissioner, said argument by counsel being as follows:

Judge Revelle: (Making opening argument on the part of the relators.) Well, now, if Your Honor please, I do want

to very sincerely in the beginning express Mr. Leahy's, mine, and our clients, appreciation, particularly of the accommodating and courteous manner in which the Attorney-General has aided us in expediting these hearings—[fol. 3483] the Commissioner as well. Usually these cases require, I find, considerably more time to get the facts in than it has in this instance, but by reason of many courtesies we have, I think, been able to bring this case down to the point where there is practically no controversy whatever as to the questions, of fact. It looks to me like in view of these exhibits that have been prepared, which correctly disclose both the contentions of fact of the Department as well as ourselves, as to the experiences, that there is not any controversy. I feel like complimenting ourselves, at least, our sense of fairness and good faith in these proceedings, as the result of the fact that the Insurance Department figures are really more favorable to our contention than are our own. The next time we have a proceeding of this kind I think we will take the Department's evidence alone and not bother with anything else, because in every instance the Department's figures disclose a condition more favorable to the contention of the relators than do our own figures. It seems to me these facts make the question of fact a very simple one.

Now, we have three different experiences to deal with; that is, according to the contention of the Attorney-General. The first is the underwriting experience, segregated from any other profits of the company, and that is the experience which we contend that is strictly the insurance business; that the other matters that have been injected into this case are matters that are not elements in a determination of what insurance rates are; that insurance rates must be predicated upon the insurance experience. Our figures disclose that for a period of five years the companies have operated in this State at a loss of 3.7 per cent of their entire premium income, which is 5 per cent of the entire capital [fol. 3484] and surplus employed and engaged in this business in the State of Missouri; it has averaged that for each of the five years, 5 per cent of the capital and surplus. According to the Insurance department's figures we have lost 4.3 per cent of our premium income, or 5.2 per cent of our entire capital and surplus, having lost that much each year

that we did business here. In other words, in the State of Missouri every hundred dollars that we have collected cost us that is, every ninety-five dollars and seven-tenths that we received from the State of Missouri we paid back one hundred dollars. Now, that is on strictly the underwriting experience, without adding one thing for the conflagration hazard. At the time that this Rating Act was written it was recognized that a conflagration is something that will occur; it always has occurred; but it is one of those things that occurs with such irregularity that the companies and their rate makers have found that they could not really make that a part and element of scientific rate making, to which theory of rate making the public generally has finally come. Right in this connection I might mention the fact that only until recent years has the public gotten away from the idea that the insurance business was a business that should not be regulated, its rates regulated and controlled by the same elements and factors that control the price of a horse, or groceries, or clothes; that is, the old idea of competition; but that idea was gotten away from as the result of very costly experience, the public finding that the big and favored insured was getting a rate that was in no manner sufficient to enable the company to carry that risk, and that it would make up that shortage by overcharging the smaller or the less favored insured. They realized that that resulted in injustices; that the man who [fol. 3485] was in the worst position to protect himself was the man who was the most grossly imposed upon, and they came to the idea of scientific rate making, taking into consideration the particular hazards, the particular things that are calculated to cause fires and contribute to fires, and to charge that risk according to its hazards. Now, they devised certain charges, and certain means of making those charges and determining what a hazard was, and in that they found that the element of conflagration could not be scientifically measured and made one scientific element of each particular rate, therefore added 5 per cent, which is the concensus of opinion among insurance men that that charge at least is absolutely necessary in order to take care of that extreme hazard which is not taken into consideration generally. Now, this record discloses I think conclusively, because there is nothing to the contrary in the

record, that this 5 per cent conflagration charge is necessary. This statute, as Your Honor no doubt recalls, specifically provides that in fixing and determining rates in this State that consideration shall be given to the conflagration hazard, not only in this State but throughout the country, because that must be the case; if you charge each State with its own conflagrations and do not permit that hazard to be spread out over the country, only to the State having that conflagration, when a State had one conflagration its rates for the next five or ten, or maybe fifty years, would have to be so high as to make them absolutely prohibitive. For that reason they base that element of the business upon what is after all the underlying principle of the fire insurance business, that is, that you must have a broad area in order to meet your laws of averages and percentages. Now, there is no doubt in this record, and there is no doubt in [fol. 3486] point of fact, that 5 per cent is the charge that is regarded as reasonable and necessary for this business. It is so regarded by insurance men, insurance commissioners, and perhaps the most conclusive proofs of its reasonableness, or at least the most conclusive proof that 5 per cent is not excessive, are the figures themselves as to conflagrations which have occurred in this country during the period of the last fifteen years. Five per cent would, in a period of twenty years, consume one year's premium income. These figures that are in this record disclose in a period of, not of twenty years, but of fifteen years, that the conflagration hazard cost the companies more than a year's—a whole year's premium income. In other words, if the experiences on conflagrations were taken as the test of the reasonableness of the charge to be added for that hazard, it would have to be—it would have to be one-fourth more than five per cent in order to meet it according to the experiences that are in this record. So we insist, in the first place, that there must be added to these experiences this five per cent that must be accumulated, not in the way of surplus, not in the way of profits to the company, but in the way of a fund that is reserved there in order to meet these extraordinary conditions when they do develop. Now, if we would add to our underwriting experience in Missouri the five per cent that must be added we would have, according to our figures, a loss in this State of 8.7 per cent of the

premium, or 10 per cent of the capital during the last five years; according to the Insurance Department's figures we have sustained a loss of 9.3 per cent of our premium, or 10.2 per cent of our entire capital and surplus for each of those five years. By taking up the underwriting experience plus unearned premiums the State contends that these pre-
[fol. 3487] miums come to us in the nature of trust funds, that is, they being funds that we are required to hold intact in order to guarantee the performance of our obligations as they mature, that these become trust funds and we, in handling them, ought to account to the persons for whom we hold them in trust, and I am not altogether persuaded that there is not, in point of justice, some merit to that contention. Although I do assert that this statute no place requires, in determining rates or the reasonableness of rates, that the earnings on unearned premiums ought not become an element of that consideration or that determination. This Rating Act does require the companies to report to the Superintendent, for some purpose that it does not express, what its earnings on unearned premiums are, but when it goes to directing the Superintendent as to the course that he shall pursue, as to the standard that he shall conform to in determining what rates shall be charged, it does not do with these unearned premiums as it does with the conflagration hazard, it doesn't say that "You shall take into consideration in fixing your rates and determining the reasonableness thereof the companies earnings on unearned premiums." Now, the very fact that the statute is specific in its direction to the Superintendent to take into consideration in doing that the conflagration hazard, and it contains no suggestion as to earnings on unearned premiums, and when in point of fact, earnings on unearned premiums are no part of the insurance business itself, we contend that the statute does not even contemplate or require us to account for our earnings on unearned premiums when it comes to fixing and determining the rate that we are entitled to charge in this State, which in the end we contend must be only a reasonable rate. But if it be conceded that because of the nature of this fund and of these earn-
[fol. 3488] ings that it is equitable that we ought to account for it, then let's see what our experience is. We have lost three-tenths of one per cent in the State of Mis-

souri. After giving the State credit for these earnings and for our judgment in investing these monies and making this additional money for the company, we have lost three-tenths of one per cent. Adding that, according to the Insurance Department's figures, we have lost nine-tenths of one per cent of the premium, which is 1.9 of our entire capital and surplus, and which, according to our figures, is perhaps—is only three-tenths of our capital and surplus. Now, if we add to that our conflagration charge, to which we are entitled, we have a loss in this State, even taking that into consideration, of 7.9 per cent of our capital stock, and of 5.9 per cent of our entire premium income for those years. Now, take the experience when we add to our underwriting business, to our insurance business, the business in which we are engaged, add to our experience on that the banking end of our business in the way of earnings on unearned premiums, and then add, as the State wants us to do, our earnings on our capital and surplus; in other words, to account to the public not only for our insurance business, but for the banking end of our business and take into consideration every penny that we receive from any source, even though that is the result of efforts and energies and judgment that the law does not require us to exercise, yet if that be considered we have had in the State of Missouri for a period of five years a profit, according to the State's figures, of 3.4 per cent of the premium income, or 3.9 per cent of our capital and surplus. Now, what becomes of that profit when we deal with our five per cent for conflagration? Even after we have accounted to the public for every penny [fol. 3489] that has come into our hands, notwithstanding that we have subjected our money to the most hazardous line of operation that money can be subjected to, we then have lost 1.1 per cent. We could have taken our capital and surplus at least out of the State of Missouri, and we could have had our earnings on that without having to do business in this State at a loss otherwise. I do not assume that any company would be willing to do business in the State of Missouri when it was losing money on its underwriting business and when it didn't have to invest a penny of its capital or surplus in this State, but when it not only had to lose money on its underwriting business, but had to take

its earnings from its capital and surplus made elsewhere and pay losses in the State of Missouri, which would be the result if it is to be required of us now to take into consideration our earnings on our capital and our surplus. Now, the statute doesn't even prescribe that we shall make a report of our capital and surplus. The statute cannot contemplate that our earnings on capital and surplus shall be considered. Why do I say that? The prime purpose of the various provisions of this Rating Act was to require the companies to so preserve their experiences and to so record those experiences, and to file with the Insurance Department such figures and experiences as would enable the Insurance Department from those reports themselves to determine whether or not they were making too much or losing too much money. This statute does not contemplate that the Insurance Department shall have to resort to any experience whatever for the purpose of getting its information as to whether or not the rate should be increased or decreased. That is the purpose of this tenth and eleventh sections of this statute, prescribing that the company shall [fol. 3490] file this, that, and the other; it is to give the Insurance Department from these reports all the data that is necessary to a computation and promulgation of rates. The statute uses those terms. It says they shall file all data that is necessary or can be used by the Department for that purpose. Now, if the statute contemplated that we should account for our earnings on capital and surplus, it was very derelict in not requiring us to furnish the Department with a sworn statement as to what our earnings on our capital and surplus were, and there is not a reference to that any place in the statute. There is one thing, one conclusion that I think cannot be escaped; it is, as long as the statute is silent on the proposition as to the earnings on capital and surplus, and if rules are to be adopted and practice to be determined in that reference, certainly any court will make those rules fair and equitable, and will adopt only such a practice as will not result in injustices or any foolishness.

Now, if the State contends that we must account to the public and must reflect in our rates our banking experience, then I say to the State that "You cannot take the profits that come from the banking end of the business

without at the same time sharing the losses that come from the banking business." We can take a million dollars of money, our capital and surplus, we can put it in our vaults, let it remain idle, the public gets not one penny then in the way of earnings on capital and surplus, because we haven't any. When we place our money in our vaults we know our money is safe; we take no chances on the hazard of investments. When we take out money our though and invest it for the purpose of not to help us, which would be the case according to their contention, but for the purpose of reducing the rates to that extent, in the end giving our [fol. 3491] earnings to the public, if we do that, if we go to that extra trouble and expense on our own part, then isn't the public making us their representative for that purpose? Can they say to us that, "You invest a million dollars in securities yielding you five per cent interest, you account to us for this five per cent interest, and yet notwithstanding that you have invested that money in securities that were regarded as good, you invested under conditions which warranted any reasonable man in investing it there"—but conditions change and our securities instead of being worth what they were at the time that we bought them, conditions over which we have no control, and in connection with investments where we have not shown bad judgment, but where we have exercised the same judgment that the average business man of the country has exercised, bankers and everybody else, investing it under conditions which seemed to make it safe and which would not result in the losing of money to us, yet conditions change; we have invested that million dollars for the purpose of making earnings for the public, that million dollar investment depreciates to the extent of a hundred thousand dollars, can the public say to us, would it be just or equitable, or would any court say that if we must account to the public for our earnings on that, then the public must not give us credit for what we lose as an ordinary consequence of investing that money instead of keeping it in our vaults where we could keep it if we wanted to? Can the State say to us, "You take this money out and invest it, you subject it to the perils and hazards to which it would not be subjected if you did not invest it, for our sake and in our behalf," and yet say, "We will not suffer the ordinary losses that come as the result of your doing that?" It would not be fair. It would not

[fol. 3492] be right. And I do not think any court would require us to do that. Now, take in this case if the State wants to take over the banking end of our business, if they want to make that a part of the insurance business, we can very well afford to let them do it. If they do it they will only show a loss to the public of something in excess of five per cent. Our securities today are worth ten per cent less than they were at the time that this war broke out.

The Commissioner: May I ask you a question, Judge?

Judge Revelle: Yes.

The Commissioner: But your earnings on those securities would be the same, wouldn't they?

Judge Revelle: Our earnings absolutely the same.

The Commissioner: Yes.

Judge Revelle: It would not make any difference at all on the earnings.

The Commissioner: No.

Judge Revelle: But as against those earnings we have got an offset; instead of having a hundred dollars which we had at the time we put the money in we have only got ninety dollars. Say if that hundred dollar investment is yielding us five per cent at the close of the year we have got a hundred and five cents. Figuring it now the hundred cents we put in and the five cents we have earned on it——

The Commissioner: Yes, sir.

Judge Revelle: —we have got one hundred and five cents; yet, if that security has dwindled, has depreciated from a hundred dollars to ninety dollars, from one dollar to ninety cents, then at the end of that year, although we have earned five per cent on it, we have net ninety-five cents instead of a dollar, or a hundred and five.

[fol. 3493] General Gose: Provided you sell it.

Judge Revelle: Not provided we sell it at all; for this reason, the laws of this and every other State in the Union declare that it is the duty, and the first duty, of the Insurance Department to see to it that no company writes a policy or operates a minute where that company's capital stock is impaired. The Insurance Department has the right any minute, any hour or any day, to examine an insurance company. When it examines that company the law fixes the manner in which the Insurance Department shall determine the value of that company's assets. It says,

"See what the assets of this company are, see what its liabilities are. If the liabilities exceed the assets outside the capital and surplus that company is impaired and it is your duty to go into court immediately and take charge of that company." Now, let the Department go down today and examine the American Central Fire Insurance Company. What is its duty? It is to take every security that company has and place upon that security a value, not what it was a year and a half ago, not what they paid for it, but the market value of that security on this day. If the Insurance Department will today go to the American Central and make its examination and do what the law absolutely commands it to do, that is, value its assets and securities at their today's market value, and comes back here and institutes a proceeding in the court declaring that company is insolvent, that its capital is impaired, if that company comes into court and says, "We are not impaired," what becomes the issue? What are your assets. What are your liabilities? What will govern and determine the court in deciding the question of fact as to whether the liabilities exceed the assets? It will take its assets and in accord-
[fol. 3494] ance with the law upon the subject it will give those assets its today's market value.

The Commissioner: And if they would enhance in value——

Judge Revelle: Absolutely the same thing.

The Commissioner: —you were getting it, of course.

Judge Revelle: Exactly.

The Commissioner: Of course, if a bond is worth a hundred dollars when you bought it and it would be worth a hundred and ten dollars now.

Judge Revelle: We are entitled to it.

The Commissioner: That is figured in your earnings too.

Mr. Leahy: Not in the earnings, but it is figured in the surplus.

Judge Revelle: As part of the suprlus.

The Commissioner: If you are going to work it backwards oughtn't it to work the other way too?

Judge Revelle: I think not, Your Honor, I think not. That is a matter I wouldn't like to go on record on at this time, because the State here is contending merely for the earnings and not for any increase in the value.

The Commissioner: Yes, sir; I see.

Judge Revelle: My contention is that if they are going to take over the banking end of our business and make that an element, then they must take the whole thing over.

The Commissioner: Yes.

Judge Revelle: They cannot take the profits without sharing in the losses. Now, if they do that then at this time and ever since this war began the banking end of this business has resulted in a loss, and instead of charging us with [fol. 3495] any profits from the banking end of the business we would charge the State and the public with five per cent loss because of that end of the business. Now, Your Honor, the very question that you asked me and the argument that I am making as to the depreciation only emphasizes, in my mind, the wisdom of not making the earnings on the capital and surplus a part of the rate making business because of the daily, monthly uncertainties or elements that it would ahead, something that cannot be determined sixty days ahead of time, and yet rates, in the very nature of them, are something that ought to be standardized, stabilized, as much as possible, and if you subject them to these changing, various elements, you disturb and destroy the very thing that the statute had in mind when it was enacted, and that is to put rates on a stable, standardized form, and as long as the statute does not require, doesn't specify that this shall be done, I mention that as a reason why it should not be injected as a rate making element into the subject. But I say if we are mistaken in all of that, if we must be charged, if the public must take our profits and not share our losses, we, under any condition, any way they figure it, are entitled to the increase that we have asked for.

I have dealt now merely with experiences for a period of five years. A condition is confronting us now that nobody could have anticipated in 1915 when the present schedule of rates was filed. Had the insurance companies then undertaken to fix a rate in contemplation of such an abnormal condition as now exists, the public would have thrown up its arms, and justly so. A condition—of course, it is folly on my part, it would be presumption on my part to even argue it, the difference in the conditions today and prior to this war, other than to the specific extent to [fol. 3496] which it has affected the insurance business. It

is in this record that seventy-five to eighty per cent of all fires which occur are partial fires. In those cases the measure of our liability is not the face of the policy, or the amount mentioned in it, but it is what it would cost to replace that burned or destroyed property. Now, the cost of everything that enters into the replacement of that injured and destroyed property has increased, as I recall the testimony, to an average of something like forty per cent—isn't that correct?

Mr. Leahy: Fifty per cent.

Judge Revelle: Forty to fifty per cent. Let a fire occur today and take a fire two years ago that destroyed or injured identically the same property, that fire today will cost us forty to fifty per cent more than it would have cost us two years ago. That will increase our losses correspondingly to that extent. We are looking now to the present and to the future, and there will be many years of the future that will bear the burdens of present conditions and of the development of present conditions. For years a campaign of fire prevention has been waged in this State and results were being achieved by reason of it. Those results have absolutely been destroyed by reason of this war. Places where success had been attained in the way of getting people to improve their risks, clean them up, remove debris, not neglect their buildings, not overcrowd them, not overwork them; all of these precautions have been done away with. War conditions have made it necessary and it will be years before those hazards which produce fires, those new and additional hazards which have come as the result of this war and which produce fires, have been removed. Now, you take our increase in taxes alone. If we are to have any profit on this business, even account for earnings [fol. 3497] on our money, if we are to have any profit at all, take and add to our experiences this increase in taxes and that item alone would entitle us to this ten per cent increase, not taking into consideration the additional expenses or additional costs of the business, and not taking into consideration the fact that these new and additional hazards are going to increase our losses.

Now, I have really spent more time on these facts than I had intended. It seems to me, Your Honor, that this whole case hinges upon some questions of law. I cannot believe that the Attorney General's Department can take these

figures and say as a fair, equitable proposition as between man and man that we are not entitled to this increase if the law has made provisions by which we can get it. I want Your Honor and the Attorney General to bear in mind this, that every dollar of money that is in this business is money placed there by individuals, and who presumably have placed it there as the result of a judgment and a conclusion on their part that it is a good investment. Now, nobody can ask money that is subjected to all the hazards that the fire insurance business is subjected to, to yield only the rate of interest that money does that is taken and deposited in a bank where it is subjected to no hazard whatever. What determines the rate of interest or earnings upon money? If your security is gilt edged just to the extent that you eliminate risks and chances for loss of your principal, your earnings on your money, the cost of the money decreases. Every time that you subject that money to an additional hazard or risk the owner of that money has got to receive greater earnings in order to compensate him for taking that risk. There is no business in the world whose capital and surplus is subjected to the perils that [fol. 3498] money invested in fire insurance business is. A company, the officials and stockholders of a company tonight may go to their beds with the knowledge that they have a million or millions of dollars to their credit, they may wake up in the morning and by one fire every penny of that may have been wiped out. Take the experience of the companies in connection with the Frisco conflagration where not only was every penny of their capital and their surplus wiped out, but where it became necessary for them in order to maintain their reputations for honesty and fair dealing and meet their obligations, where it became necessary for substantially every company in the United States to go to its stockholders and say, "You must subscribe for so much stock; we must pay our losses." Not only chances of their capital and surplus going, but also the reputation of these men as business men and honest men going, unless they go into their pockets and contribute even more than they have already invested in the company. We insist money, I say, subjected to those hazards, and in order to get people to subject their money to those hazards, in order to get the public to put in sufficient capital to carry on this business, it must have a greater rate than money employed

in the ordinary channels of industry. It is now twelve o'clock, Your Honor, and any time you want to quit I will be glad if you will tell me.

The Commissioner: Just suit yourself. I will give you all the time you want. Use your own convenience.

Judge Revelle: I am compelled to leave on one of the afternoon trains; Mr. Leahy will remain here. As I understand it one of the contentions of the State is, that the Insurance Department has the right to decrease rates whenever it finds that the profits that we have made for a period [fol. 3499] of five years are in excess of what constitutes a reasonable profit to us during that period of operation; that it can do that of its own motion, or that it can do it at the instance of some complainant, but that after rates have once been filed and approved there is no provision by which those rates can be increased, or if there be a provision by which they may be increased that that is left entirely to the arbitrary discretion of the Insurance Superintendent. In other words, that there is nothing in the law saying to the Superintendent that rates can be increased whenever it is found that they are too low to yield a reasonable profit. May I ask, Judge Gose, if that is the contention of the State? I won't ask that, I understand that to be the contention. Now, upon that, and to that, I want to direct a little attention. There is no doubt but what Section 14 provides that rates can be reduced by the Superintendent. There is no doubt but what that section provides in reducing rates the standard to which the Superintendent shall conform, the thing that shall guide him in determining to what extent he will reduce the rate, is the standard and measure of a rate that will yield merely a reasonable profit to the company. I do not assume that there can be any contradiction on that when it comes to reducing the rates under Section 15. Now, then, is there a provision for increasing rates, and if there be a provision for increasing the rates is the power of the Superintendent absolutely arbitrary, or is there some standard to which he must conform in increasing the rates the same or similar as the standard that has been provided him for decreasing the rates? I take it that is the question in this case? Now, in the first place, the Rating Act specifically provides—it begins with—will you let me have that?—the very first sec-

tion of this Act contains a provision, a word or two which, [fol. 3500] coming at the place it does in the Act, and in connection with the context it does, is very significant. This Act, after providing that the insurers must maintain a public rating record from which the rate may be ascertained in advance of making the insurance, provides this, Such rating record shall include, in so far as applicable, general basis schedule embodying basis rates, charges, terms, conditions, permits and standards," and now, "and such other data necessary to the computation or promulgation of equitable rates and rules of practice." It does not provide that it shall be for the computation and promulgation of rates that are merely equitable to the public, but for rates that are "equitable," as well as for equitable rules of practice. It seems to me that that itself has, as an introduction, furnished the idea of what this Act is for; that it is for the purpose of assuring the result of equitable rates, equitable rates towards the public and towards the other party to the contract. Now, we come to section 5. This section, as Your Honor will observe, provides for an increase in rates under two different conditions. In the first, or rather in the second place, it provides for changes of rate on account of the physical hazard, and on account of the changes in a physical hazard. Now, that merely means this, that if an insurance company takes this building out here, it has a rate on it—this Act, in other places, provides that in making up your basis rate, and all of that—when they change the rate on account of a physical hazard because some new element or hazard or risk has been added to the building, all they have got to do under this section is to make their own record of that change. Now, they don't have to give the Superintendent of Insurance any notice of [fol. 3501] their increase of that; they don't have to obtain his approval of that; they can make that whenever they see fit, recognizing that those changes are changes that should be promptly made and that the more delay there is the more—in fact, just as the necessary change in rate on account of the physical hazard was delayed, it would defeat these provisions of the section as against discrimination for every day that the rate was not changed.

The Commissioner: May I ask you a question there?

Judge Revelle: Yes.

The Commissioner: Wouldn't that cover your war increased hazard by reason of the overcrowding of the buildings?

Judge Revelle: Possible some of them. That is a phase of the case I want to deal with at a later time.

The Commissioner: Yes, sir.

Judge Revelle: Now, this section, as I say, makes provision for a change in rate of that kind without ever obtaining the consent of the Insurance Department. Now, what is the meaning of this other section, but any insurer maintaining its own public rating record, or any actuarial bureau shall be permitted to change or lower its rate or rates whenever it sees fit? That is assuming they are not going to commit suicide, and if they are going to do that the approval of the Superintendent is not going to prevent it. "Provided that rates shall not be raised until at least ten days' notice has been given by the insurance company to the Superintendent of Insurance and his approval obtained but in making a change, it shall be required to make the change in writing on its public record, and to immediately give notice thereof to the Superintendent of Insurance." Now, to what kind of an increase——

The Commissioner: Pardon me for interrupting you. I [fol. 3502] don't want to bother you, but did you do that? —did you take charge of that section and proceed under that section?

Judge Revelle: Yes, sir; yes.

Mr. Leahy: That is the section we filed under.

Judge Revelle: And that is the provision of the section under which we filed.

The Commissioner: Yes, sir.

Judge Revelle: Now, Your Honor, there being a specific provision made for increasing rates on account of the physical hazard, what is the meaning of that provision? Isn't there express authority in it on the part of the Insurance Superintendent to increase rates, but has not the authority to increase rates as he has to decrease rates? This section places the initiative upon the insurance company, assuming that whenever rates reach the point that an increase is necessary they will make the increase and bring it properly to the attention of the Superintendent of Insurance, but giving him the power of reducing, thinking that perhaps

the public will not do that, not have the opportunities of knowing. Now, unquestionably under that they have a right to initiate an increase; they have a right to make an increase in rate and to give the Superintendent notice of it. Now, they have done that. They have increased their rate and they have given him the notice of it, and they made the change on the record but they have not gotten his approval. Now, what does that provision as to his approval mean? Does it mean that the Superintendent is clothed with absolutely pure, ironclad, arbitrary powers? Does it mean that conditions so change in a State that rates which have been collected are wholly inadequate, notwithstanding that, that rates are inadequate, that no insurer is willing to write that risk, and notwithstanding that the insured [fol. 3503] recognizes the justice of the increase in rate, is willing to and does contract with the insurer at that rate, notwithstanding that unless that increase is granted the company will operate at a loss, does it mean that the Superintendent can arbitrarily with or without reason deny and refuse his approval of a rate? Does it mean that the Legislature has not enacted a law upon that subject? Does it mean that they have not said that the rate in this State is and must be a reasonable rate? Or does it mean that instead of the Legislature saying that "We have fixed the rate at a reasonable rate and have left the details, the gathering of facts to more specifically determine what rate is that rate that we have declared, that is, this reasonable rate, that instead of that we have delegated to the Superintendent of Insurance the absolute right to refuse to permit an increase in rate, and that in doing that he doesn't have to conform to any standard, to any law, or anything else?" Unless that be the contention and unless that may be the meaning of this Act, then there must be some standard there to govern the Superintendent in either approving or disapproving a rate. Now, I lay it down as a proposition that I don't believe can be contradicted, that if the Legislature has said to the public and to the insurance companies that, "We are going to fix and prescribe the only rates upon which you can contract; we are going to destroy the factor of competition; we are going to remove your right to contract as to the rate; that the public is going to fix the rate itself," if it has said to the Superintendent that

"You can approve or disapprove a rate according to your wishes, your whims, according to an arbitrary power," then that part of this Act which requires his approval absolutely cannot stand; it is a delegation to him of a strictly legisla- [fol. 3504] tive function. Take the discussion of the Supreme Court—in our brief we are merely referring to this one case because this case contains so many citations, so many cases on the proposition, that I felt after Your Honor got through reading this you perhaps would not want to read any more of them—I think that the court in this case adopted—I think that will be found after reading the authorities generally throughout all jurisdictions upon the subject, this court in upholding the validity of the Public Utilities Act adopted the rule that is universally adopted in dealing with the question of delegating legislative powers to a ministerial officer. I don't think I shall read this. I don't like to read cases?

General Gose: What is the case?

Judge Revelle: It is the case of State ex rel. Rhodes versus The Public Service Commission.

General Gose: State against who?

Judge Revelle: Rhodes. Our friend Marion Rhodes down there when he was running for Congress, he wanted to knock out the Public Service Act because the Public Service Commission had increased some rates—270 Missouri, 547.

General Gose: What is it?

Judge Revelle: 270 Missouri, 547. Well, Your Honor, I don't care to take up time by reading this case anyway, but here is what the court holds, they say that the Legislature there did not delegate—they state unquestionably the Legislature had the right to prescribe rates so long as those rates were not confiscatory, that they could not prescribe a rate that would be confiscatory, but that staying within that limitation that the Legislature itself had a right to prescribe the rates. They said, now did the Act which delegated to the insurer, or the Public Service Commission, the right to investigate and ascertain the facts and then in the [fol. 3505] end determine the specific rate, was that a delegation of legislative functions? They answer that no. For this reason, they said, "The Legislature has not delegated to this board the right to determine what rates or what shall be the rate in Missouri. The Legislature has passed

a law saying that the rate for public service concerns is a reasonable rate, a rate yielding a reasonable profit upon the investment under the circumstances of the particular case." Now, they said that is the law; that the Legislature has passed that law; that is the rate, that is of Missouri, a reasonable rate, a rate yielding a reasonable profit on the investment. Now, they said it is clearly within the power of the Legislature to delegate to one of its appointees the duty of investigating the facts, gathering the facts and determining what the facts are in a matter, and then to see what particular rate under the facts makes this lawful rate, or a reasonable rate. And they said that in these times when conditions change so rapidly, when in perhaps one part of a year conditions are such that these things can be operated at one rate, and maybe at the conclusion of the year conditions are so thoroughly different that another rate, in order to be reasonable towards all parties, must be a different one. They have said that the enlightenment that has come with progress and development and improvement and the recognition that these things should be fair and equitable and reasonable, has demonstrated that the Legislature itself cannot, in the very nature of things, make these investigations of fact and determine the questions of fact, and determine what specific rate constitutes this reasonable rate.

Therefore, they said that is purely ministerial, purely administrative, because the Legislature has furnished that Commission with the standard to which it must conform. [fol. 3506] It has not left it to the Legislature to say that, "We will fix this rate regardless of how much it yields to the companies, or how much it costs the public." But the Legislature has said, "Here is a standard and you must determine that standard from the facts." Now, if they had not prescribed that standard, if they had left it to the insurer or to the public board to say that, "We will fix a rate regardless of whether it is reasonable or unreasonable," there cannot be any question as to what the result of that decision would have been. The Legislature cannot do that. They cannot vest a purely ministerial, administrative officer with the right of saying that a rate—that the law of the State is that a rate shall be one that conforms to certain conditions, but the Legislature must prescribe the condi-

tion, and then let him see when that condition is carried out after investigating the facts. Emphasizing that and right along the same line, the Supreme Court in a recent case in dealing with a statute which provided that within a period of I believe six months, or twelve months, after its enactment, the Superintendent of the Insurance Department and the companies should get together and should agree upon a standard form of an insurance policy, and that after that had been done that then only that form of policy should be written in the State, the Supreme Court, taking that up, in a very able opinion disposed of it by saying that it is absolutely void, in that the Legislature could not delegate to the Superintendent of Insurance Department the power to say what provisions could go into a contract, and what could not, when they had not given him any standard at all to conform to. They said it was a clear delegation of the function of the Legislature. They conceded the Legislature had the right to prescribe a standard [fol. 3507] form and put anything in the world in there they wanted to, "but," they said, "you cannot confer that power upon an administrative officer; it is arbitrary; such powers cannot be vested in them" in a ministerial officer.

General Gose: Let me ask you a question there, Judge.

Judge Revelle: Certainly.

General Gose: Suposing before the Public Service Commission an application was made for a raise of twenty per cent, an increase of twenty per cent in a certain utility, and the Public Service Commission refused to grant the increase, could you mandamus them and compel them to do it?

Judge Revelle: I do not recall the exact provisions of the Public Service Commission Act, Judge, or whether it prescribes the procedure. There is no doubt in my mind in the world on this proposition, in the first place I assert this as a proposition of law that cannot be successfully contradicted, that the Legislature cannot lodge the power of fixing a rate, or it cannot make a rate itself. That is so conclusive that it cannot be judicially refuted. The United States Supreme Court passed upon that in that old Ames case.

General Gose: That is not the question I asked. I asked could the courts command the Commissioners to make any particular rate?

Judge Revelle: Here is my answer to that exactly, that under this statute you have—that is, conceding that reasonableness, under this statute, is the test,—if you have a right to increase, a rate to whatever is reasonable, and if you file or make that increase to a point where the facts show that it is reasonable, then that particular rate a court can command the officer to allow. I wouldn't say this, that since we have applied for a ten per cent increase and the [fol. 3508] testimony shows, as I believe it does, that we are entitled to a fifteen per cent increase that a court would have the right to command the Superintendent to make that a fifteen per cent increase. But I do say that where the facts show, where the uncontradicted facts, or the facts found by the court or its representative shows that, under a law, we have shown that we are entitled to the paricular rate or particular increase of rate, that we have applied for, that the court can say that rate must be allowed. I don't think there is any question about that.

General Gose: Have you any authorities on that—to that effect?

The Commissioner: Has that ever been done in any of these Public Service Commission cases?

Judge Revelle: My recollection is that in the Public Service Act—on the Public Service Act there arose quite a controversy among members of the court as to what the Act provided they should do when they reviewed a record and the finding of the Public Utilities Commission. As I recall it, the Utility Act itself provides merely that their record—their judgment shall be quashed in that manner, leaving it to them to make a new record after the court has, in a manner, directed them what to make. But now if that be the case it was wholly because the statute directed the court as to the character of order it should make, and I think you will find in that connection, if that was the holding of the court—if they have finally held, and I know that was a very much disputed question and the members of the court divided up on it—if they have held that they cannot direct that board to make any specific order which they find the facts entitle the party to, they have held that they are not bound by the finding of facts made by that commission in any manner, that they can go into the facts anew themselves, and this statute contains

[fol. 3509] a provision as to the only kind of relief they can grant and you will also find that certain members of the court have held that the Legislature has not even the power to limit the relief that they can give after they have been given jurisdiction of the cause, and I do not think the Legislature can. I do not think that the Legislature, when the cause is of a character that the Supreme Court has jurisdiction of it, or that any other court has jurisdiction of it, that is, the right to review it, it absolutely cannot make a rate itself; it cannot appoint an agent of its to make a rate and deprive the parties of a review of that rate. The United States Supreme Court has said that.

The Commissioner: No doubt about that.

Judge Revelle: And if that is confiscatory that rate will not stand. Now, that being the case, it is a subject matter—it is a case that the courts have inherent constitutional jurisdiction of, and if it is I do not think the Legislature has it within its power then, if it undertook to do it, to prescribe that after they have jurisdiction of the case they cannot give the relief that the facts and the law entitled the party to. I do not think the Legislature can limit a court's jurisdiction in that manner, just like the Supreme Court in connection with the quo warranto where they undertook to say that a certain character of proceedings should be decided in a certain manner in a certain court; it happened to be a case where the Supreme Court could entertain the quo warranto jurisdiction, and they said, "True, the Legislature said this shall be tried in this manner, in a certain court, but the Legislature cannot limit or restrict our jurisdiction in that way. Our jurisdiction comes from the organic law and not from the Legislature."

Now, there is one other case that I think this court im- [fol. 3510] pressed me with the fact, in a case where I was opposed by Judge Gose here, in a case where I was trying to compel the Insurance Superintendent to do a thing, or rather he was willing but he said that, under the law, he did not have a right to do it, we taking the position that this Rating Act had repealed the anti-coinsurance statute, which is a statute not permitting the companies to write the coinsurance clause outside of cities of a hundred thousand

population, we taking the position that the Rating Act repealed that, and we said it was repealed through implication because the new Act gave the Superintendent the power to fix the rates, and it required the companies to file with him every form or endorsement or provision that they put in their policy which affected the rate, that it gave him supervision over the forms that they file, and that if they put a provision in here that made their risk greater than they did in this other policy they had a right to change or charge a different rate for it, and that to the extent that the Superintendent had been given that jurisdiction of this matter that he had the right to let the co-insurance clause go in a policy and make a reduced rate on account of it. The Supreme Court very promptly said to me in that case, "If you are right on that, then this Act is unconstitutional, because" they said, "the Legislature cannot delegate to the Superintendent of Insurance the right to determine anything about what goes in the policy, notwithstanding that that provision is something that has a direct effect upon the rate itself, and notwithstanding that this Act requires the Superintendent to do it, yet" they said, "that would be a delegation of legislative function and it could not be done." If I was right in my construction of it it [fol. 3511] could not be done. Then I didn't have any bottom at all to stand on. And I think they are right absolutely on the proposition.

Now, Your Honor, it seems to me that as to our right of review, I don't think there is any question about that, because Section 15, which is the section providing for a court of review, is no part of Section 14, which Judge Gose contends relates to a reduction of rates, which provides that any order or any finding of fact of the Commissioner may be reviewed by the party that is not satisfied with it. It is no more. In providing what orders and findings can be reviewed there is nothing in Section 15 that limits its provisions to Section 14, a reduction of rates, any more than to an order made by the Superintendent in approving or disapproving an increase in rates. It, in an entirely different section, provides for the review of any and all orders. If you take and construe both together, Section 14, then there wouldn't be any doubt in the world but what Section 15 authorizes a court review where the Superin-

tendent refuses to approve an order, but Section 14, if the State is right, belongs to another place in the statute, a reduction of the rates, and should not be said to be in conflict with anything relating to increases. So I can't see how there can be any controversy at all on the proposition that Section 15 provided for the court review and is just as applicable to an order of the Superintendent in refusing to approve a rate, or permit it to be collected, as to an order refusing the rate. There is no such limitation in the Act at all, and I take it that where a statute admits of a construction that results in fair and equitable consequences that a court is going to do that. There could be no doubt as to the injustice and the lack of equity and a fair dealing to provide that one party to a contract had at any time the [fol. 3512] right to have rulings of the rate fixing power reviewed and not the other one. The court would not give an Act that construction where it admitted of a reasonable and a fair and an honest construction. Rules of construction are made for the purpose of avoiding these injustices and hardships and unenviable and undesirable consequences.

Getting back to the other proposition; now, in the first place, unless that first provision in Section 1, which declares for equitable rates, and unless that part of Section 14 which prescribes that in reducing rates the Superintendent acquiesces a standard shall be the reasonableness of rates and the reasonableness of profits arising therefrom, unless those apply likewise to his action in approving the rates or refusing to approve the rates then, as I say, he has no standard in the other and the act requiring his approval would be unconstitutional; or, at least, this would follow, that since the companies have been given the right themselves to increase the rates, make the change on their records, give ten days' notice of it, then that part of the act requiring the approval of the Superintendent would have to be held to be purely clerical, a directorial act of approval, with no right to disapprove, but giving to the public and the Superintendent the power to correct any injustice that came as the result of the companies' own increase by resorting to Section 14. Now, if he did that what in the end would be the result? The Superintendent would have to be governed by the standard of the reasonableness of a rate if

he reduced it, if they had the right to increase it, and his approval is purely directory, which would have to be, as I see it, unless some standard is the standard for his approval or disapproval, then the public would have to let the companies increase. The Superintendent of his own motion, or upon complaint of somebody else, in order to pre- [fol. 3513] vent excessive increases would have to operate under Section 14. If he went to operating under Section 14 here is his standard, a rate that will yield the companies a reasonable rate or profit. Now, why have to go through that indirect course in order to achieve one end? The ends in the two matters would be the same; the course of procedure would be quite different; doing through indirection that which could not be done directly. Rules of construction, of course, do not encourage construction of that character. I do not believe—I do not agree with the fact that there is some difference between insurance companies and public utility companies. It is recognized that the insurance business is something that is of at least a quasi-public nature, otherwise the Legislature could not fix these rates itself, it would be strictly a private business. It is a business that is absolutely indispensable to the public. The banks, the wholesale houses, the retail houses cannot operate thirty days to save their lives without fire insurance. I discovered that at the time that the companies were out of this state for three months when I was Superintendent. Now, a business of that kind, and where the Legislature has the right to fix its rate, I don't believe that the more modern view of the subject, of the nature of fire insurance business, will permit a Legislature, either itself, or through a selected appointee, to fix a rate that would not yield a reasonable profit. I do not believe they have got the power to do it. I think that this act now, Your Honor, is an act that is capable of a construction to this effect, that the rate in this State must be a reasonable rate; a reasonable rate is a rate that yields the insurers merely a reasonable profit upon its business, taking into consideration the hazardous character of the [fol. 3514] business and all that, and it is left to the insurance companies and the Insurance Superintendent. Merely the manner of getting the facts together and determining what specific rates constitute that duly enacted rate of a reasonable one. Now, this act admits of that construction,

and if it does, why, that construction eliminates all constitutional objections; it eliminates all ideas of unfairness or injustice, or inequality. I do not think the Legislature ever intended to enact a law saying that the Superintendent had the power to fix rates that were so low that the companies could not operate under them; that they would have to leave the state, when the state realizes that their presence is absolutely indispensable. I do not believe the Legislature ever intended to say that, "We are not going to treat you people fairly; that we think you ought to be satisfied with a reasonable profit and we will give you that," and that is all they can ask for; that is all they do ask for, but I do not believe the Legislature ever meant to say that merely because you have come in here and merely because you do not have to stay, that if you do stay we are going to compel you to operate at a loss, or "We are going to enact a law by which you cannot, even notwithstanding changed conditions, ever change your rates so as to meet conditions which are causing a loss to you." I am afraid I am taking up too much time.

The Commissioner: Let me ask you, didn't the Supreme Court discuss that when the Public Service Commission allowed a two and a-half cent rate here, in that case didn't it go up and wasn't it discussed by the Supreme Court, or do you recall?

Judge Revelle: I am sure that the question of the power——

The Commissioner: Of the power of the Public Service [fol. 3515] Commission to fix that rate; did they discuss, it?

Judge Revelle: They absolutely held that it had to be a reasonable rate.

The Commissioner: But that the Public Service Commission had the right to fix that rate?

Judge Revelle: Oh, yes, yes, held that the Public Service Commission had the right—now, they said this, they said the Commission is not fixing a rate at all, they said the Legislature fixed the rate, they have said the rate is a reasonable rate, but that in the matter of getting the facts and determining what specific rate is that reasonable rate, would be left to the Public Service Commission—they held that.

The Commissioner: Yes.

Judge Revelle: But the very course of reasoning in that case is to the effect that if the Legislature had not prescribed a standard for them to ascertain the facts in connection with, had not said, "You must fix a reasonable rate, regarding the companies improvements, capital and everything else, and reasonable profits," then they evidently would have said such course of reasoning indicates that the act was a delegation of legislative function. Now, as I say, this other construction, which I think is borne out in the act itself, eliminates all these constitutional objections; it provides the same standard of reasonableness for the company as for the public; it is fair; it is honest; and it eliminates all constitutional objections and conforms to all rules of construction, and to my mind evidently ought to be the construction given it if it in any measure admits of it. The courts hold they will strike words from the statute, they will give it a very limited meaning, they will give it a very extended construction in order to prevent hardships, [fol. 3516] or unreasonable, unnatural consequences, or in order to avoid being offensive to the constitution, and, of course, those rules are all splendid rules.

Now, but one other phase and I am going to quit burdening you. That is the proposition about increasing this rate in the manner we did, that is, by flat percentage increase instead of by going out and re-rating each risk specifically. It seems to me that the provisions that I have already called Your Honor's attention to, that is, that we have got the right to increase our rate, our specific rate, in such instances as we have got to file a specific rate, we have got a right to do that without the approval of the Superintendent at all. Now, this other provision refers to some other sort of an increase, an increase evidently of where increasing an account of the specific physical hazard will not take care of it, we contend is the difference now. You will find in examining this statute that there is not a word in this statute saying when you increase a rate you shall increase it by re-rating each risk. The only provision in this whole statute in that relation is that such records must be maintained, such data recorded, such things shown, as are necessary to a computation and promulgation of an equitable rate. Then there is one further provision in Sec-

tion 5 which provides that the rate must be so made and recorded as will enable the property owner or the public to ascertain what the rate is. Now, there is not another suggestion in this act as to how a rate shall be increased or decreased. As long as the rate is so made in the end whether it has been changed, increased or decreased, if the change has been made in such a manner, if the rate in the end is in such a condition, and the record of that rate in such a condition, that a person can look at it and see [fol. 3517] what his rate is, the provisions of this law are satisfied. Now, you take up increasing this rate ten per cent, show the rate, its analysis, its component parts, its charges and credits, basis schedule, with a provision that ten per cent thereof is added—can any man ascertain that rate? If a man knows enough to go at a record and know what one hundred means, he is also able to tell what one hundred plus ten per cent of it means. And that is all in the world the statute requires. Now, here to my mind is the strongest proposition in this case for this act—if there is any one thing that this act is positive of, if there is any one thing that it strongly emphasizes and enjoins, it is that there shall not be any discrimination in rates in this State. It places upon the Superintendent of the Insurance Department the absolute duty and of his own motion to remove or abate any discrimination that exists in reference to rates of any kind. Now, we must presume that the superintendent has performed that duty: we must presume that every rate in this State is, in its relation to every other rate, an absolutely fair, equitable and non-discriminatory one; we must presume that because the law says the Superintendent shall see that that is done. Now, at the time that we made our flat percentage of increase what did we find? Indulging that presumption, we found that every specific rate in this state was absolutely on a basis of uniformity and equality; there was not any discrimination at all among them. Now, when we took and changed those rates, increased them ten per cent, aren't we doing just as fully what this law contemplates as if—in fact, more fully than if we made the change in each specific rate? Why? Because if the basis upon which we started is absolutely just and conforms to the requirements of law,

[fol. 3518] then if we do not change that basis, but merely use that basis as a basis of our percentage increase, it results in absolute non-discrimination. And I cannot find in this act to save my life any provision that says in making this increase because of bad experiences that we have got to go through and re-rate every risk in the state. Anyway that theory is not consistent with the provisions here. It is not consistent for the first reason because you cannot do it under a period of two and a half or three years; it is absolutely impossible, and the law does not contemplate that. Evidently the law does not contemplate that when we—say when the Superintendent requires us to reduce a rate that we go out and put that reduction on each specific rate. He makes a general order of reduction on it, a percentage decrease, he won't take up each specifically. Under that Section 14 if he finds we are collecting more than a reasonable profit is he going to take up each specific risk in this state and say you make this reduction on this, and this reduction on that? The law doesn't require that. It is absolutely impractical. It is impossible. It would be a percentage decrease. Now, we have got the same right to make a percentage increase. I think, Your Honor, after all, all laws are subject more or less to matters of absolute honesty, at least the construction of them is that enters into it. We are making this application because of new conditions which we are hopeful will not continue in existence long. They are conditions, the result of things over which we have no control, yet they are conditions that are confronting the companies in such a manner as to be absolutely threatening their very existence. There is no doubt in the world about that. We would not have gone into these states where they have been making money and asked to increase these rates ten [fol. 3519] per cent if it had not been necessary. This is not merely a Missouri matter. It is a movement to gather from every county and state in the Union sufficient money to enable the companies to tide over this abnormal condition and to leave them in a position that they can carry out and meet their obligations to the public, and at a time when it is more important to the public that these obligations be met than perhaps at any other time. Now, it is

to meet that temporary condition. We absolutely could not meet it if we had to go and specifically re-rate each risk in this state on account of the changes in physical hazard, it would take us two and a half years to do that, and I know that since Paul Prosser and I are going to this war that it is not going to last any two years and a half, so we could not do it, a thing like that. Now, I am going to leave the rest of this to the others.

The Commissioner: I suppose we had better not hear any further argument now until after lunch.

Mr. Leahy: Very well, Your Honor. What time will we meet again?

The Commissioner: Any time suits me. Arrange it to suit your own convenience.

Mr. Leahy: Say 2:30. Does that suit you, General Gose?

General Gose: Any time, I will be right here. I am not going out for my lunch.

The Commissioner: Very well: we will meet again at 2:30.

Thereupon, at 2:30 p. m. on said 24th day of October, 1918, pursuant to the recess taken for the lunch hour, the hearing in this matter was resumed and the further argument by counsel proceeded, as follows:

[fol. 3520] Mr. Leahy: May it please Your Honor, as Judge Revelle has said, it would appear that there is no serious conflict in the facts in this case. It is in this state, however, a unique case as it is the first time that there has been an attempt to have a review as provided for in section 15 of this act. And it would appear to me that in studying this matter it might not be inadvisable for the Commissioner and court to take into consideration first of all that these insurance companies are private corporations; they are not engaged in interstate commerce; they sell no product; they manufacture nothing; they cannot be likened to a public service corporation; they enter into a contract with a person who is willing to enter into the contract to guard him against the hazards of fire or windstorm losses, hail, and so on. Now, then, the state assumes the right

to tell these private corporations that, "You must charge a certain price for that protection that you give to another individual." We find in looking over the statutes of the State of Missouri that it was the theory of the Legislature when it first began to legislate with reference to the insurance companies that all protection must be afforded to prevent these insurance companies from entering into a combination to fix rates, a combination that would make them a trust so that they could determine among themselves the rate that they would charge, and the Legislature from 1895 up to 1911 assumed that it was necessary to keep up a lively competition between these companies to prevent a set, fixed rate being charged by them all. And yet in 1911 the Oliver Law came along in which there was an attempt made to fix a rate, and as it has been called to you- attention the castastrophe that occurred, for it was a catastrophe, in 1913 when the insurance companies were [fol. 3521] obliged to withdraw from this state. Now, the Supreme Court of the United States has said in the German Alliance case, by a divided court of five to four and I believe without any prejudice that any one who reads the dissenting opinion of Judge Lamar in that case will say that that expresses the reason and the law applicable to the case; by a divided court then our Supreme Court of our country has said that insurance business is a private business, coupled with a public use, that in an interpretation of the Kansas statute, in upholding that statute, in giving the state the right to supervise rates, four members of that court did not believe that any state had that right; they believed that it was in violation of the Fourteenth Amendment; they believed that it put a limitation on individual endeavor and individual right, the right of contract, because they say in there there is no parallel in the law anywhere in this or in England—in this country or in England, to give a Legislature authority to put a limitation on the right of a corporation or an individual to contract at a price for its product. But that is the law and the insurance companies are perfectly willing to acquiesce in the law if it does not confiscate their property. You come then to a view of this act of 1915 and what does it mean? What is the intent and purpose of that law? As

Judge Revelle points out in the very opening section in that law it is stated that it is the intent and purpose of the law to establish equitable rates. Equitable to whom? To every one concerned we presume. Then if that is the purpose and the schedule is filed in 1915 and there is no authority that can raise that rate except for change in hazard, in physical condition, what happens? The Commissioner can reduce the rate but it can never increase. Then if some untoward condition arises the companies would either have [fol. 3522] to withdraw, they would have to cancel their contracts, they reserve that right, and withdraw from the state or their property would be confiscated. Now, what would a withdrawal mean to these companies? It is not the mere returns in premiums, but it is an extensive business that they have built up at a tremendous cost. Their agencies are not built over night, but are the result of fair dealing, their popularity is the result of fair dealing, so that if they withdraw they would lose millions and millions of dollars; if they remain and the rate can't go up, they are ruined, so they are placed practically in a dilemma. Now, I do not want to reiterate, but as was called to your attention the courts generally are prone to sustain a law where possible without reading into it a meaning, giving it a broad or a narrow meaning in order to attain the object, the intent and the purpose of the Legislature. Now, what was the intent and the purpose of the Legislature in reference to this act of 1915? What had it in view? Equitable rates. They had in view primarily this, that here was a business that under the ruling of the Supreme Court of the United States in 1913 the Legislature had a right to take a representative for the state and for the people and place him in practical charge of the rates that were made, so the Legislature, for economy's sake on the part of the state, and yet for the convenience and benefit of the state, said: "You must establish bureaus, rating bureaus, in various sections of this state; you must have expert men there who will be able to go into a building and say what rate should be charged there and assign scientific reasons for it; you must have inspectors to go from time to time and see if there is any change in these; you must keep up a corps of expert men; you must keep up a corps of book-

[fol. 3523] keepers; you are amenable to a visit from any citizen, give him information when he desires it at any time during business hours, and you, Mr. Insurance Company, must pay for that." Not alone that, but the state reserves the right to appoint an official who has supervision over these bureaus. Now, this law means that there is no attempt on the part of this Legislature to take away from the insurance company the right to make its rate. No attempt to do that. But they say, "We are going to safeguard that rate, so where there is simply a change in physical hazard you will file—make your filing of the change of rate and it will become operative immediately, but if for other reasons, which we cannot and won't define or attempt to define, it becomes necessary for you to change that rate, reasons other than physical hazard alone, then you will make your filings and they will not become operative until approved by the Superintendent. It is true we give you still the right, both where there is a change in physical hazard, and for other reasons, to make a new and a higher rate, but in the second instance it is subject to the approval of the Superintendent." This law then provides that if the filing for change in physical hazard, or if the filing for the other reasons, whatever they may be, is made, and in the second instance is approved, and those conditions change, then the Superintendent can, under section 16, cut those rates down. Now, that is, to my mind, the clear and manifest intent. The state puts the duty on the insurance companies to maintain the conveniences through which the information is derived, the state puts the duty on the insurance companies to make reports from time to time as to its assets and its liabilities, the state is in perfect accord and knows at all times what is being done, and [fol. 3524] the state then says, "This is not fair, that is too high, bring it down to an equitable basis, equitable to the people and equitable to you so that you won't lose money but that you will make money." That is what it means. Now, very well. What else does it mean under section 15, as you suggested? It means then this, that under section 5, "for reasons other than change in physical hazard you file a new rate within ten days the Superintendent of Insurance declines to approve that rate"—and here let me say that the conduct of the Superintendent or Acting Su-

perintendent of Insurance at the time we were there on the 27th of March was the most amazing conduct that I have ever seen on the part of a public official. We appeared with witnesses from St. Louis and witnesses from Chicago; we suggested that we would like to have a record made of our showing as we contended that it was not within the whim or caprice of the Superintendent to reject a rate that we had solemnly filed, but that it must be done with reason, in equity to us and the public. The Superintendent, or the Acting Superintendent, Mr. Clark, said, "I do not see anything in this law that gives you a right to have a record made." "Why," we said, "this is perfectly amazing. Suppose that you rule incorrectly, that we are not entitled to this increase, doesn't section 15 provide that either party or any citizen has a right of review de novo. What is to be reviewed? Supposing under this imperfectly drawn law that that section means that the right of review is by certiorari, that we are to take this record up to a court for review? Supposing that that imperfectly drawn law means that if you make a finding of fact on the showing that we present to you here which is erroneous, that we will appeal to the court and get a mandamus to compel you to [fol. 3525] make a proper finding of fact, how are we going to do it; you won't give us an opportunity to make a record?" The Acting Superintendent thereupon asked us to come back at two o'clock, and he appeared there with Mr. Spencer, and Mr. Spencer said, "What do you want a record for? We won't give you a record. You can't make a record. It is not necessary for you to introduce any testimony. You have made your filings and that is all. We will pass on it." And, may it please Your Honor, it took a great deal of persuasion to be permitted to make a record. And now we are confronted by the Attorney General, at the opening, the very threshold of this hearing before Your Honor, by the Attorney General, saying, "You cannot introduce any testimony that was not presented to the Acting Superintendent of Insurance." Do the gentlemen conceive that their duty ends in refusing to grant these corporations a right to exist? And that is all we are asking, a right to exist. It would appear to me that one of the questions you propounded, or it was the Attorney General who propounded the question I believe, to Judge

Revelle, with reference to the action of the Public Service Commission if a railroad company attempted to increase its rates twenty per cent; there is no parallel between these two, between these companies and the public service company; it is a different law and we have to act under this law, in accordance with this law, and we are not public servants. The law says that we are private corporations, coupled with a public use; and right in that regard, the question was asked Judge Revelle with reference to the duty on the part of these companies, under this law, despite the fact that this law is silent, absolutely silent, as to the duty of the insurance companies to credit Missouri with its proportion of the earnings on capital and surplus, although [fol. 3526] the law is absolutely silent on that phase of the case, there seems to be a very strong contention made by the Insurance Department and the Attorney-General that that law contemplates that we must give credit. Let's go back to their parallel; take in the instance of railroads, do you think that the Public Service Commission contemplates at the time it passes on the propriety and the justice and the equity of a rate, that they take into consideration the capital and surplus of the company? Supposing, for instance, they pass a rate of two and a half cents per mile and then base that not alone on the cost of operating, but base it—it is very hot in here, isn't it?—suppose then in determining the justice of a rate a Public Service Commission would say, "Well, now, the cost of operating is so much, and two and a half cents per mile with the number of passengers that you carry will pay you back your cost of operating and give you something in excess." Supposing in determining that fact they took into consideration what were the earnings on the banking department of the railroads? What would happen? The Pennsylvania Railroad could operate at a rate that would be absolutely ruinous to the Missouri Pacific. The Home Insurance Company could operate at a rate that would be absolutely ruinous to a company that has been in existence five or six years. If you have to take into consideration the earnings on the banking end of this business, then I tell you that it makes little difference what rate you make, there will never be another insurance company that will be able to operate in the State of Missouri that is not now strong financially.

because they cannot possibly compete with the big and rich company, and that is the reason in this law for saying nothing with reference to the earnings on your capital and surplus.

[fol. 3527] Now, we have adopted a theory that I believe to be entirely erroneous in this record; we are showing you here our business and experience for a period of five years past in order to justify a present increase. There is nothing in that law that says that at all. Not a word. Section 14 does say that before the Insurance Commissioner can decrease rates he must take into consideration the experience for five years past, and the reason to my mind that the law is silent with reference to what must be contemplated with reference to the past experiences before a rate can be increased is because a part of section 5 anticipates an untoward condition, an unusual condition, such as we are now in. And, therefore, I contend that under the plain wording of this law, without adding anything to it, that all that is necessary for you to do, not with reference to change in hazard because that acts automatically, but when you wish to increase your rates under the other subdivisions of section 5 you must make a showing as of the condition then. You may have made, for instance—supposing that taxes, Federal taxes, had increased instead of five per cent, as we have proven here to a demonstration, instead of making an increase in our cost of operation of five per cent, it had made an increase in our cost of operation of twenty-five per cent, we might have spent two hundred and fifty billions instead of fifty billions. It is possible. Now, I contend that on the automatic increase of our cost by reason of an impost put on us by our Federal Government, or our State Government, that you can show that condition operating then; that it is immaterial to show that the year before you made money, and the year before you lost money, and three years preceding you made money, and a general average or an average earning of ten per cent or five per cent as the [fol. 3528] case might be. That is immaterial, because those conditions that prevailed when you did make money were not present when you wish to make your showing, or had nothing to do with reference to the unusual conditions that made the increase necessary. Now, we have shown here without any contradiction, there is none at all, there

is no contradiction of any allegation contained in the reasons assigned for this increase. Not one word. There has been no attempt made to show that our costs with reference to Federal taxes have not increased five per cent. There has been no showing made that our cost of operation with reference to salaries, and printing and stationery, and traveling, and so on, has not increased 1.81 per cent. There has been no showing made but that our evidence is correct to show that the cost of replacement has increased fifty per cent. And in that regard you asked Judge Revelle, said "Judge, don't you believe that under that first part of section 5, if there is a change in physical hazard, that you have a right to increase these rates automatically?" There may not be a change in physical hazard except by the debris, as you suggested.

The Commissioner: That was your suggestion in the evidence.

Mr. Leahy: We did introduce evidence to that effect, but let us eliminate that as one of the things for accentuating fires and making fire hazard greater. Let us eliminate that. Haven't we got the six per cent for taxes? Haven't we got the $1.81 for the cost of operation? Now, then just eliminate, if you will, the cost of replacement for the minute. There is seven per cent, practically seven per cent increase in the cost of operation this year over last year. What do the figures show if you will take the five year's experience? [fol. 3529] Don't they show a loss? And taking into consideration the banking department, they show a gain of about one per cent. Very well. Take one per cent off of seven per cent and you have got six per cent loss. Will Your Honor say that an earning—and mark you, we do not concede for an instant that you should consider the earnings in the banking department, but for the sake of this argument, and taking every basis that the state has shown they show an earning of a little over one per cent, isn't it?—taking into consideration—no, it is nearly three I believe, isn't it Mr. McGee?

Mr. McGee: I don't remember exactly, Mr. Leahy.

Mr. Leahy: Let me get those figures exactly, taking into consideration what Mr. McGee's figures show.

Judge Revelle: It shows—our figures, let's see, see Mr. McGee's figures show 3.4 per cent of the premium income and 2.9 per cent of the capital and surplus.

Mr. Leahy: Let's call it 4 per cent then—four per cent—taking into consideration everything that can properly or improperly be changed, all earnings of every kind; very well, then you have got four per cent, as against that five per cent for Federal taxes, two per cent for salaries, traveling expenses, Pullmans, and so on; printing and stationery, seven per cent.

Judge Revelle: Five per cent conflagration.

Mr. Leahy: No, not yet. That will leave you minus three per cent. Will Your Honor say that seven per cent would be an improper earning for companies engaged in such extraordinary business as this, where tomorrow morning might bring utter ruin to them? Would seven per cent be [fol. 3530] unreasonable? Why, Your Honor perhaps knows, being an attorney for a bank, that, for instance, Armour & Company, Swift & Company, Morris & Company, are paying seven and one-half per cent now on notes secured by mortgage on all of their property where the aggregate amount of the notes is thirty per cent of the assessed valuation of their property. Your Honor perhaps knows that the National Lead Company on its preferred stock is paying seven per cent and that stock is only selling at par. Your Honor knows as a man familiar with banking that every preferred stock in this country of every big corporation is selling on a basis of seven per cent. and yet that stock comes before all the comon stock. The stock of these corporations, as a whole, today, is good, is absolutely secured and yet they pay seven per cent. Would *it* be unusual for a company engaged in such hazardous business as fire insurance business to earn seven per cent? Is there anything improper, unreasonable or unjust in asking for this ten per cent lawful rate increase, when the showing is that if they were paid that they would only earn four per cent net? Four per cent. Let me get the figures to you. Four per cent as shown by the figures of Mr. McGee, taking into consideration the interest on principal surplus, unearned premiums and underwriting experience. Then you show five per cent taxes that are an additional cost; you show two per cent for business, cost of business, which is seven per cent; that leaves you three per cent in the red, doesn't it? Now, then, you add to that the ten per cent that you ask for increase, that will give you seven per cent that you had

earned. That is the showing there? And yet, despite that fact—despite that fact, we contend that this four per cent should not be considered at all; that the underwriting ex-
[fol. 3531] perience in this state shows by the figures of Mr. McGee, the expert for the Insurance Department, that the companies have lost money during the past five years. That is not all. Mr. McGee's figures are all wrong, desipte the fact that they are very accurate, because you have a law here, the last sentence in section 41, "In determining the question of rates and profits in accordance with this act, the Superintendent of Insurance shall give proper and reasonable consideration to the conflagration liability, both within and without the state." Has he done that? Is there any evidence here except the evidence that says that five per cent is a reasonable consideration of conflagrations? Then if you take off the five per cent, even including interest earned on capital and surplus, that would only give us net earnings of two per cent. Is there anything unreasonable in earning two per cent on a hazardous business? Would you put your money into a hazardous business such as the fire insurance business with a guaranty even that you were going to make two per cent on it? But that is not all. Your Honor must consider the tremendous cost of thirty per cent additional cost by reason of war conditions that are put on these companies, by reason of the fact that eighty per cent of all fires are partial losses and the cost of replacement has increased fifty per cent. There is thirty per cent more. So that puts you in the red twenty-eight per cent of your premium receipts. Why wouldn't you consider that? Is there anything in this law that prohibits you from considering all of the equitable facts and surrounding circumstances? And those are perfectly unusual; they never existed before. Can we, because of the cost of materials having jumped fifty per cent, increase a rate on that building across the street because of the change in physical
[fol. 3532] hazard? Obviously not. Now, Your Honor, I have no doubt, is saying, "Well, how is it with the showing that you actually lose twenty-eight per cent, how is it you only ask for an increase of ten per cent? Even though you have got you- ten per cent you would still lose twenty-eight per cent. Why don't you ask for more?" And I will tell you why. This is a Federal movement. These Insurance

Commissioners, and the condition, by the way, has changed since we were here last, all of the Pacific Coast states having permitted this ten per cent surcharge, and with the exception of Oklahoma, Missouri, Texas and Kansas, this surcharge has been made. The Attorney General in interroga-ing Mr. Hess said, "Isn't it a fact that these four states are the only states that have a law that is similar?" That is not a fact. Arkansas has a similar law. Kentucky has a similar law. Wisconsin has a similar law. Minnesota has a similar law. And other states that I now do not recall.

The Commissioner: Got any appeals there pending in a proceeding like that, in any of those states?

Mr. Leahy: In the Oklahoma—in Oklahoma, and I am very glad you mention that, I might have overlooked it—in Oklahoma the Insurance Commissioner, a gentleman by the name of Welch, assumed that he was going to make a record as a benefactor of the people, and he arbitrarily, and the law is similar to ours although I think a little better drawn, and that is true of the Kansas law, but in Oklahoma Mr. Welch arbitrarily just decreased the rates twelve per cent. There was no attempt made to go into the change in physical hazard or any other charges. He just said "Twelve per cent down." A general twelve per cent decrease. Well, an application for an injunction was made. He said that new rate would go into effect within a certain [fol. 3533] time, and the case went finally to the Supreme Court of Oklahoma, and the Supreme Court said that the nisi prius court was right in not granting injunctive relief because it was not a proper case for an equity court as there was a right of review provided for in the law and their remedy was in that reveiew. So too here. If we had applied, for instance, after we made this showing, and we made practically the same showing before Mr. Clark, and then he wrote that ridiculous opinion, which afterwards was modified and changed, and suppose we had gone in on our record and said here, "We want a mandamus to compel this man to approve that," they would say, "Look at the 49th Oklahoma and you will see that you can not get this extraordinary remedy because you have got a remedy here provided by our statute, namely, the right of review." Now, what does the court review? The court reviews the facts de novo; that is, you can introduce

any facts that are competent and pertinent to the hearing. It is not a certiorari. It is a review of the facts, review of the case, and review of the whole thing, and then you will make a finding on those facts, and say under the facts, "I find that there has been an increase in Federal taxes, which increase costs the operation five per cent, and there has been an increase in the cost of operation which increases the cost two per cent of the premium receipts," and whatever else you find, and those are the findings which are the solemn findings that are binding afterwards on this Insurance Commissioner. There is not any arbitrary power given to an Insurance Commissioner to simply say, "I make a finding that is contrary to reason, contrary to justice, that is confiscatory." There still is some fragment of the constitution left. I don't know that very much can be gained by rereading or emphasizing this paragraph [fol. 3534] 5 to you, but we contend that it was the manifest intention of the Legislature to enact a law that was constitutional, and if there is no right to increase these basic rates then the law is unconstitutional, because it would become, under conditions as now exist, confiscatory. I will not address myself to the facts in this case any further than to say that each and every assertion made and the reasons assigned for the filing of this writ have been established without any attempt made to refute them. Now, if Your Honor has any doubt about that, why, then, I would like to discuss the facts.

The Commissioner: I do not recall that anybody testified that that change was made in writing on the public record of the company. I don't know whether that would be a condition precedent under section 5 or not.

Mr. Leahy (reading from section 5): "All public rating records required to be maintained by this act"—is that what you mean?

The Commissioner: Go ahead down further in the act.

Mr. Leahy: "whether kept by insurers separately or actuarial bureaus, shall show the rate which such insurer proposes to charge and collect, but any insurer maintaining its own public rating record, or any actuarial bureau shall be permitted to change or lower its rate or rates——

The Commissioner: "whenever it sees fit."

Mr. Leahy.—"provided that rates shall not be raised——

The Commissioner: All right.

Mr. Leahy: —"until at least ten days' notice has been [fol. 3535] given by the insurance company to the Superintendent of Insurance and his approval obtained," I don't know whether there was any evidence on that.

The Commissioner: No, go ahead now, a little further down, "but in making a change, it shall be required to make the change in writing on its public record"—just the next line.

Mr. Leahy: "But in making a change, it shall be required to make the change in writing on its public record, and to immediately give notice thereof to the Superintendent of Insurance."

The Commissioner: You don't have to make that change on this public rating record until after the Insurance Superintendent has approved it? Is that your idea about that?

Mr. Leahy: Now, Your Honor, I am very glad you mentioned that if there is any doubt about it. What we did, you see, that is Waterworth and Hess, attorneys-in-fact, made that change and gave the notice to the Attorney Genera, or to the Insurance Superintendent; they made the change and then gave the notice, in writing, a copy of which is here before you.

The Commissioner: I didn't recall that.

Mr. Leahy: Which we introduce in evidence.

The Commissioner: I didn't recall that. That is what I asked you, if the evidence was in there. I just didn't recall that particular part of the evidence.

Mr. Leahy: Yes. You see they simply say, "We give notice of the general flat increase in the rate of ten per cent."

The Commissioner: Yes, sir.

Mr. Leahy: Yes.

The Commissioner: And they changed it on their public record?

Mr. Leahy: Changed it forthwith, but it could not be- [fol. 3536] come operative until it had the sanction and approval——

The Commissioner: Of the court.

Mr. Leahy: Or the Superintendent of Insurance.

The Commissioner: Yes, I mean the Superintendent of Insurance.

Mr. Leahy: For instance, in Ohio, in Pennsylvania, in New York, in Wisconsin, in Minnesota, in all of these states these companies have made money, and when they went before a department which showed that they had made substantial amounts ranging from six to twelve per cent for a period of running over five years, and asked for the ten per cent increase, they represented that they intended to put this into effect in every State in this Union. Now, if they can put it into effect in every State in this Union, then despite these figures that we have shown you, why, these companies will, as a whole, make money, and that is the reason, because it was to be universal throughout the States, a fixed rate of increase, because of these very conditions that applied to every State. It is not because of any change in the physical hazard, that is, the make-up of the building, but it is because of the conditions that prevail throughout the United States equally in every State that they have made a fixed increase that applies throughout the United States, and that is the reason they did not ask for twenty-five per cent in Missouri, which they would be justified in asking. Now, if Your Honor thinks of any other fact which we allege as a reason for making this increase that has not been established by uncontradicted testimony, I would like to discuss it.

The Commissioner: I do not recall any.

Mr. Leahy: Otherwise I am through.

[fol. 3537] And thereafter the referee filed his report in said cause, containing, among other things, the following:

VI

The relators contend that the banking department of the insurance business, being an entirely separate kind of business, the earnings thereof should be excluded in estimating the earnings of the business for the purpose of fixing the [fol 3537a] rates. The Attorney-General, however, has demonstrated to the satisfaction of the referee that the insurance end of the business helps to pay the expenses of

EXHIBITS.

Exhibits A, B, C, D, E, F, G, H and I, on the part of the Respondent. Also Relator's Exhibits Nos. 12 to No. 39, inclusive.

INDEX TO EXHIBIT VOLUME.

	Page.
Respondent's Exhibit A, (introduced on page 192 of the Referee's Report)	1-55
Respondent's Exhibit B, (on page 193 of Report)	56-58
Respondent's Exhibit C, (on page 462 of Report)	59-60
Respondent's Exhibit D, (on page 462 of Report)	61-62
Respondent's Exhibit E, (on page 462 of Report)	63
Respondent's Exhibit F, (on page 464 of Report)	64
Respondent's Exhibit G, (on page 464 of Report)	65-67
Respondent's Exhibit H, (on page 464 of Report)	68-70
Respondent's Exhibit I, (on page 464 of Report)	71-73
Relator's Exhibits Nos. 12 to 35e, inclusive	74-118
Relator's Exhibit No. 38 (page 68 of Report)	120-124
Relator's Exhibit No. 39, (page 69 of Report)	125-128

EXHIBIT "A"

MISSOURI ANNUAL STATEMENT

of the

AMERICAN CENTRAL FIRE INSURANCE COMPANY

of SAINT LOUIS, in the STATE OF

MISSOURI

to the

SUPERINTENDENT of INSURANCE

STATE OF MISSOURI.

For the Year Ending December 31, 1917.

3540

NOTICE TO COMPANIES.

Items 8 and 9 of assets should be returned *net*.
"Counter" or "Home office" premiums should be included in items 8 and 9 of ledger assets (see foot notes "C" and "D," page 4).
Unpaid return premiums and reinsurance premiums December 31, *but since paid* may be deducted from income under item 6.
Commissions (items 5, page 0) may be returned *net* by deducting commissions allowed on return premiums and reinsurance premiums.

5

ANNUAL STATEMENT.

3541

For the Year Ending December 31, 1917,
Of the Condition and Affairs of the
AMERICAN CENTRAL INSURANCE COMPANY
Organized under the Laws of the State of
Missouri, made to the SUPERINTENDENT OF
INSURANCE OF THE STATE OF MISSOURI
pursuant to the laws thereof.

Incorporated February, 1853. Commenced Business, February, 1853.

Home Office, 816 Olive St., Saint Louis, Missouri.

OFFICERS.

President—B. G. Chapman, Jr.

Secretary—D. E. Monroe. Vice-President—D. E. Monroe.

DIRECTORS OR TRUSTEES.

John F. Lee.	Thomas Wright.	O. K. Peckham.
A. H. Wray.	Robert McK. Jones.	D. E. Monroe.
A. H. Reller.	B. G. Chapman, Jr.	H. C. Eddy.

I.—CAPITAL STOCK.

1.	Amount of capital paid up in cash	$1,000,000 00	
2.	Amount of ledger assets (as per balance) December 31 of previous year	$4,569,044 72	
3.	——— crease of paid-up capital during the year	None	
4.	Extended at		$4,569,044 72

II.—INCOME.

		(1) (A) Fire.	(2) Marine and Inland.	
5.	Gross premiums, per item 2, VI, page 6	$5,817,304 76	$438,693 42	
6.	Deduct reinsurance premiums, fire, $2,935,226.32; marine and inland, $209-220.10; return premiums—fire, $1,068,865.27; marine and inland, $86-219.13	4,004,091 59	295,439 23	
7.	Total net premiums written (other than perpetual)	$1,813,213 17	$143,254 19	$1,956,467 36
8.	Deposit premiums written on perpetual risks—gross			None
9.	Gross interest on mortgage loans, per schedule B, less $ none accrued interest on mortgages acquired during 1916		$1,500 00	
10.	Gross interest on collateral loans, per schedule C		4,447 51	
11.	Gross interest on bonds and dividends on stocks, less $1,048.25 accrued interest on bonds acquired during 1916 per schedule D		131,798 61	
12.	Gross interest on deposits in trust companies and banks, per schedule N		7,895 46	
13.	Gross interest from all other sources (give items and amounts):			
	Certificates of deposit	$5,059 44		
	St. Louis & San Francisco R. R. Co., refunding 4% bonds, defaulted January, 1919	4,468 23		
	Commercial Union Assurance Co., marine account	535 10		
	Railway underwriters	215 57		
	Re-insurance Bureau	187 13		
	Cotton Insurance Association	41 83		
	Milwaukee Underwriters' Building Association	1 08		
	Miscellaneous	100 47		
15.		$10,618 82	10,618 82	
16.	Gross rents from company's property, including $———— for company's occupancy of its own buildings per schedule A	None		
17.	Total gross interest and rents			156,260.40

(A) Including business other than "Marine and Inland."

Q By gross premiums is meant the aggregate of all premiums written in the policies or renewals. Are they so returned in this statement? Answer. Yes.

18.	From other sources (give items and amounts):			
19.	Items transferred from schedule X to schedule D, part 2		$925.00	
20.				
21.				
22.				$925.00
23.	Increase in liabilities during the year on account of reinsurance treaties			None
24.	From agents' balances previously charged off			310.41
25.	Borrowed money (gross)*			None
26.	Gross profit on sale or maturity of ledger assets, viz:			
	(a) Real estate, per schedule A	$	None	
	(b) Bonds, per schedule D		2,467.50	
	(c) Stocks, per schedule D		350.00	2,817.50
27.	Gross increase, by adjustment, in book value of ledger assets, viz:			
	(a) Real estate, per schedule A	$	None	
	(b) Bonds, per schedule D		None	
	(c) Stocks, per schedule D		None	
28.	Total income			$2,116,780.67

*Company is at liberty to briefly state transaction, so that explanation can be carried as footnote in department report.

III.—DISBURSEMENTS.

		Fire.	*Marine.			
1.	Losses—Actual amounts paid policyholders, less discounts if any (including $338,328.69 occurring in previous years)			$2,497,890.59	$209,455.45	
		Fire.	*Marine.			
2.	Salvage	$7,801.91	$4,243.87			
3.	Reinsurance received	1,507,733.56	79,783.02	1,515,535.47	84,026.89	
4.	Net losses paid			$982,355.12	$125,428.56	$1,107,783.68
5.	Less adjustment expenses					22,598.03
6.	Agents' compensation, including brokerage				427,917.51	
7.	Agents' allowances				4,760.42	
	Total (6 and 7 only)				$432,677.93	432,677.93

*Ocean and inland, also automobile, except policies limited to fire cover.

*Ocean and inland, also automobile, except policies limited to fire risks.

8.	**Field supervisory expenses:**		
	(a) Salaries of field men	$78,952 72	
	(b) Expenses of field men	33,702 62	
	(c) Executive—Traveling expenses of others than field men	806 43	
	Total field supervisory expenses		$113,461 77
9.	Salaries and fees—Directors, officers and clerks		51,589 84
10.	Rents, including $ none for rent only for company's occupancy of buildings owned		11,334 47
11.	Furniture and fixtures, including rent of and repairs to same		1,510 21
12.	Maps, including corrections		3,361 12
13.	Inspections and surveys, including underwriter's boards and tariff associations		34,014 78
14.	Federal taxes		2,458 19
15.	**Taxes, licenses and fees:**		
	(a) State, county and municipal	$44,828 69	
	(b) Insurance department	8,180 14	
	(c) Fire department		
	(d) Fire patrol and salvage corps	3,902 39	
	(e) All other taxes, licenses and fees (except on real estate)	13,152 71	
			70,063 93
16.	Postage, telegraph and telephone, exchange and express		12,474 86
17.	Legal expenses, excluding legal expenses on losses		108 28
18.	Advertising and subscriptions, $2,039.73; printing and stationery, $1,852.22		20,563 95
19.	Agents' balances charged off		1,105 14
20.	Miscellaneous, itemized—Auditor's fee, $785.46; premium on surety bonds, $276.23; premiums on insurance, $153.60.		1,215 29
21.	Deposit premiums returned on perpetual risks		None
22.	Real estate expenses:		
	(a) Repairs and expenses	None	
	(b) Taxes	None	None
23.	Paid stockholders for interest or dividends (amount declared during the year, $ None)		665 00
24.	Scrip or certificate of profits redeemed in cash, $ None. Interest paid to scripholders	None	None
25.	Decrease in liabilities during the year on account of reinsurance treaties		None
26.	Gross loss on sale or maturity of ledger assets, viz.:		
	(a) Real estate, per schedule A	None	
	(b) Bonds, per schedule D	None	
	(c) Stocks, per schedule D	$1,215.00	
			1,215.00

27.	Gross decrease, by adjustment, in book value of ledger assets, viz.:			
	(a) Real estate, per schedule A		None	
	(b) Bonds, per schedule D		$7,614.45	
	(c) Stocks, per schedule D		None	$7,416.45
28.	Borrowed money repaid (gross)			None
29.	Interest on borrowed money			None
30.	Total disbursements			$1,895,617.92
31.	Balance			$4,790,207.45

IV.—LEDGER ASSETS

1.	Book value on real estate (less $ none incumbrances) per schedule A			None
2.	Mortgage loans on real estate, per schedule B, first liens $25,000; other than first, $ none			$25,000 00
3.	Loans secured by pledge of bonds, stocks or other collateral, per schedule C			79,500 00
4.	Book value of bonds, $3,043,528.63; and stocks, $404,533.11, per schedule D			3,448,061 74
5.	Cash in company's office		$20,543 09	
6.	Deposits in trust companies and banks not on interest, per schedule N		13,759 93	
7.	Deposits in trust companies and banks on interest, per schedule N		469,808 51	504,111 53
8.	(c) Agents' balances representing business written subsequent to October 1, 1917			576,471 54
9.	(d) Agents' balances representing business written prior to October 1, 1917			7,062 66
10.	Bills receivable, taken for marine and inland risks			None
11.	(e) Bills receivable, taken for fire risks			None
12.	Other ledger assets, viz.: Certificates of Deposit.			
13.	Mercantile Trust Company	St. Louis 3%	$50,000 00	
14.	Merchants Laclede Bank (National)	St. Louis 3%	50,000 00	
15.	Mississippi Valley Trust Company	St. Louis 3%	50,000 00	
			$150,000 00	
16.	Total ledger assets, as per balance on page 3			$4,790,207.47

Non-Ledger Assets.

17.	Interest due, $ None and accrued, $300.00 on Mortgages, per schedule B		$300 00	
18.	Interest due, $ None and accrued, $40,839.49 on Bonds, per schedule D, part 1		40,839 49	
19.	Interest due, $ None and accrued, $127.50 on Collateral Loans, per schedule C, part 1		127 50	
20.	Interest due, $ None and accrued, $1,132.32 on other Assets (give items and amounts).			
	On Certificates of Deposit:			
	Mercantile Trust Company	$54 16		
	Merchants Laclede National Bank	725 00		
	Mississippi Valley Trust Company	354 16		
		$1,133 32	1,133 32	
21.				
22.				
23.	Rents due, $ None and accrued, $ None on Company's property or lease		None	
24.	Total			$42,400.31
25.	Market value of real estate over book value (Schedule A)			None
26.	Market value (not including interest in item 18) of bonds and stocks over book value (Schedule D)			None
27.	Other Non-Ledger Assets, viz:			
28.	Reinsurance recoverable on paid losses, schedule E			14,957 13
29.				
30.	Gross assets			$4,847,564 91

Deduct Assets Not Admitted.

31.	Company's stock owned, $ None; loans on, $ None	None
32.	Supplies, printed matter and stationery	None
33.	Furniture, fixtures and safes	None
34.	Agents' balances, representing business written prior to October 1, 1917	$7,062 66
35.	Bills receivable, past due, taken for marine, inland and fire risks	None
36.	Loans on personal security, endorsed or not	None
37.	Overdue and accrued interest on bonds in default	None

38.	Market value of special deposits in excess of corresponding liabilities, per special deposit schedule page 10	$53,098 14	
39.	Book value of ledger assets over market value, viz:	513,595 00	$573,755 80
40.			
41.	Total admitted assets		$4,273,809 11

(c) Include herein all agency and home office premiums not over three months due, less reinsurance, return premiums, commissions and agents' credit balances.

(d) Include herein all agency and home office premiums over three months due, less reinsurance, return premiums and commissions.

(e) Including business other than "Marine and Inland."

V.—LIABILITIES.

1.	Gross losses adjusted and unpaid (due, $174,022.74; not yet due, $ None)	$174,022 74	
2.	Gross claims for losses in process of adjustment, or in suspense, plus $35,000 reserve for losses incurred prior to December 31, of which no notice had been received on that date	453,649 38	
3.	Gross claims for losses resisted	48,890 81	
4.	Total	$676,562 92	
5.	Deduct reinsurance as per schedule E (column 2)	405,804 98	
6.	Net amount of unpaid losses and claims		$270,757 95
7.	(a) (A) Gross premiums (less reinsurance) received and receivable upon all unexpired fire risks, $ ——————; unearned premiums per recapitulation, page 6, column 6	$1,757,692 73	
8.	(a) Gross premiums (less reinsurance) (cash and bills) received and receivable upon all unexpired inland navigation risks, $169,108.51; unearned premiums (fifty per cent)	84,554 25	
9.	(a) Gross premiums (less reinsurance) (cash and bills) received and receivable upon all unexpired marine risks, $ None; unearned premiums (—— per cent)	None	
10.	Total unearned premiums as computed above		1,842,246 98
11.	Amount reclaimable by the insured on perpetual fire insurance policies, being —— per cent of the premium or deposit received		None
12.	Net premium reserve and all other liabilities, except capital, under the life insurance or any other special department		None
13.	Unused balances of bills and notes included in admitted assets, taken in advance of premiums on open marine and inland policies or otherwise, returnable on settlement not included in items 8 and 9 above		None
14.	Principal unpaid of scrip or certificate of profits authorized or ordered to be redeemed		None
15.	Interest due or accrued, including $ None on borrowed money		None
16.	Dividends declared and unpaid to stockholders, $255.98; to policyholders, $ None		255 98
17.	Salaries, rents, expenses, bills, accounts, fees, etc., due or accrued		4,545 97

17.	Salaries, rents, expenses, bills, accounts, fees, etc., due or accrued		4,545 97
18.	Estimated amount hereafter payable for Federal, state and other taxes based upon the business of the year of this statement		$50,000 00
19.	Contingent commissions or other charges due or accrued		None
20.	Funds held under reinsurance treaties		None
21.	Due and to become due for borrowed money		None
22.	All other liabilities, viz		None
23.			
24.			
25.	Total amount of all liabilities except capital		$2,167,806 88
26.	Capital actually paid up in cash	$1,000,000 00	
27.	Surplus over all liabilities	1,106,002 23	
28.	Surplus as regards policyholders		2,106,002 23
29.			
29.	Total		$4,273,809 11
30.	Amount of such surplus which constitutes a permanent reserve fund represented by scrip which by the terms of its issue cannot be redeemed so as to diminish said reserve (carried inside)		None

(A) Including business other than "Marine" or "Inland."

(o) By gross premiums is meant the aggregate of all the premiums written in the policies or renewals. Are they so returned in this statement? Answer. Yes.

VI.—RISKS AND PREMIUMS.

	(1) (4) Fire Risks	(2) Gross Premiums Thereon	(3) Marine and Inland Risks	(4) Gross Premiums Thereon
1. * In force the 31st day of December, as per line 6 under this heading in *last year's statement*	$807,500,626	$7,912,504 78	$13,107,173	$234,690 89
2. * Written or renewed during the year, per Income No. 5	611,926,376	5,817,304 76	22,210,167	438,693 42
3. * Excess of original premiums over amount received for reinsurance	. . . .		. . . .	
4. * Total	$1,419,427,002	$13,729,809 54	$35,317,340	$673,384 31
5. * Deduct those expired and marked off as terminated	563,427,504	5,462,394 60	15,876,841	303,908 85
6. * In force at the end of the year	$855,999,498	$8,267,414 94	$19,440,499	$369,475 46
7. Deduct amount reinsured (Schedule required)	502,703,108	4,864,070 80	10,290,570	200,366 95
8. Net amount in force	$353,296,390	$3,403,344 14	$9,149,929	$169,108 51

Perpetual risk not included above, $ Nil. Deposit Premiums on sale, $ Nil.

RECAPITULATION OF FIRE RISKS AND PREMIUMS.

(1) Year Written	(2) Term.	(3) Amount Covered	(4) Gross Premiums Charged Less Re-insurance.	(5) Fraction Unearned.	(6) Amount of Premiums Unearned.
1917	One year or less	$108,643,600	$1,062,171 63	1-2	$531,085 81
1916	Two years	1,035,448	4,947 45	1-4	1,236 86
1917		680,321	5,363 55	3-4	4,022 66
1915		53,108,863	478,059 68	1-6	79,676 61
1916	Three years	59,179,952	515,762 72	1-2	257,881 38
1917		67,273,339	605,014 18	5-6	504,178 49
1914		259,156	2,509 01	1-8	313 64
1915		314,893	3,006 08	3-8	1,127 28
1916	Four years	579,630	5,209 28	5-8	3,255 80
1917		210,248	1,736 41	7-8	1,519 35
1913		11,245,093	129,375 69	1-10	12,937 57
1914		13,242,140	139,156 83	3-10	41,747 05
1915	Five years	12,326,847	145,286 88	1-2	72,643 43
1916		12,174,316	146,378 59	7-10	102,465 01
1917		12,807,622	157,643 48	9-10	141,879 14
	Over five years			*pro rata*	
	Advance Premiums	214,922	1,722 65	100%	1,722 65
	Totals				
	Perpetual risks				
	Grand Totals	$353,296,390	$3,403,344 14		$1,757,622 73

(A) Including business other than "Marine and Inland."

"By Gross Premiums is meant the aggregate of all the Premiums written in the Policies or Renewals. Are they so returned in this statement?" Answer. Yes.

GENERAL INTERROGATORIES.

1. Have all the transactions of the company of which notice was received at the home office on or before the close of business, December 31, been truthfully and accurately entered on its books? Answer. Yes.
2. Except as shown in the next succeeding questions, does this statement show the condition of the company as shown by the books, records, and data at the home office at the close of business, December 31? Answer. Yes.
3. Have there been included in this statement proper reserves to cover liabilities which may have been actually incurred on or before December 31, but of which no notice was received at the home office until subsequently? Answer. Yes.
4. Does this company write any of the following named lines of reinsurance? Answer. Yes.

If so, give the amount of net premiums written and losses incurred in each class during the year of statement.

Motor Vehicles.		Tourist's Baggage.		Registered Mail.	
Net Premiums	Losses incurred (less reinsurance)	Net Premiums	Losses incurred (less reinsurance)	Net Premiums	Losses incurred (less reinsurance)
$168,788 46	$89,965 07	$ None	$ None	$ None	$ None

Wind Storms and Tornadoes.		Hail.		Sprinkler Leakage.	
Net Premiums	Losses incurred (less reinsurance)	Net Premiums	Losses incurred (less reinsurance)	Net Premiums	Losses incurred (less reinsurance)
$66,816 67	$25,138 30	$ None	$ None	$ None	$ None

Explosion.		Earthquake.		War Risks.	
Net Premiums	Losses incurred (less reinsurance)	Net Premiums	Losses incurred (less reinsurance)	Net Premiums	Losses incurred (less reinsurance)
		$925.61		$5,164.12	

5. Gross premiums (less reinsurance and return premiums) received from organization of company, $60,057,857.63.
6. Total losses per statement of last year plus net losses paid per page 3, line 3, $35,061,045.02.
7. Total dividends declared since commencing business—cash, $4,017,931.
8. In all cases where the company has assumed risks from another company, there should be charged in this statement on account of such reinsurance a reserve equal to that which the original company would have required to charge had it retained the risks. Has this been done? Answer. Yes.
9. Largest gross aggregate amount insured in any one hazard located anywhere in the United States, without any deductions whatever for reinsurance, whether the same be in admitted or nonadmitted companies. Answer, $150,000.
10. Largest net aggregate amount insured in any one hazard located anywhere in the United States. Answer, $50,000.
11. What amount of installment notes is owned and now held by the company? Answer. $ None.
12. Have any of these notes been hypothecated, sold or used in any manner as security for money loaned within the past year? If so what amount? Answer. No.

3551

COPY BOUND CLOSE

what amount? Answer, No.

13. Balance of scrip outstanding and deliverable to policyholders, $ None; scrip not actually delivered, $ None.
14. Scrip dividends declared during the year, $ none; limit of scrip accumulation before any redemption, $ none.
15. Net cash participating premiums received during the year, $ None.
16. Total amount of the company's stock owned by the directors at par value, $650.00.
17. Total amount loaned to directors or other officers, $ None; loaned to stockholders not officers, $ None.
18. Does any officer, director or trustee receive any commission on the business of the company? Answer, No.
19. What interest, direct or indirect, has this company in the capital stock of any other insurance company? Answer, None.
20. Is a majority of the capital stock of the company owned or controlled, directly or indirectly, by any other corporation? Answer, Yes, majority of stock owned by Commercial Union Assurance Co., Ltd., of London, England
21. Has this company guaranteed policies issued by any other company and now in force? Answer, No.
If so, give full information.
22. Were all the stocks, bonds and other securities owned December 31, 1917, in the actual possession of the Company on said date, except as shown by the schedules of Special and Other Deposits? Answer, Yes. If not, give full and complete information relating thereto.
23. Were any of the stocks, bonds or other assets of the Company loaned during the year covered by this statement? Answer, No.
If so, give full and complete information relating thereto.
24. State if an examination of this company's affairs has been conducted during the year of this statement by any insurance department?
If so, by what department? Answer, No.
25. Has any change been made during the year of this statement, articles of incorporation, deed of settlement of company? Answer, No.
If not previously filed, furnish herewith a certified copy of the instrument as amended.
26. What officials and heads of departments of the company supervised the making of this report? Secretary, Assistant Secretary, Acting Cashier, and Auditors.
Note: Companies operating under what is known as the "surplus law" (New York Insurance Law, sections 130, 131, 132) are required to state:
27. Amount of "special reserve fund," according to said law, deposited with the insurance department of the State of New York. Answer, $.....
28. Amount of "guaranty surplus fund," as provided by said law. Answer, $.....
29. What changes have been made during the year in the United States manager or the United States trustees of the company? Answer .....
30. Does this statement contain all business transacted for the company through its United States Branch, Home Office, or otherwise on
(a) Risks located in the United States? Answer.....
If not state exceptions in full.
(b) Risks wherever located from companies of the United States as reinsurance? Answer.....
If not state exceptions in full.
(c) Risks located in the United States accepted for companies of foreign countries as reinsurance? Answer.....
If not state exceptions in full.

BUSINESS IN THE STATE OF MISSOURI DURING 1917.

	Fire Risks Dollars	Cts.	Hail Dollars	Cts.	Marine and Inland Dollars	Cts.	Tornado Dollars	Cts.	Aggregate Dollars	Cts.
Gross risks written	$33,925,618	00			$652,106	00	$3,383,317	00	$37,961,041	00
Less $6,117,079 risks canceled	5,678,369	00			102,540	00	356,170	00	6,117,079	00
Net risks written	$28,247,249	00			$549,566	00	$3,027,147	00	$31,843,962	00
Gross premiums received	303,163	50			13,575	99	14,909	88	331,649	33
Less $37,496.56 return premiums	34,827	05			1,337	01	1,302	52	37,376	58
Net premiums received	$ 268,326	45			$ 12,238	98	$ 13,607	36	$ 294,172	75
Losses paid (deducting salvage)	155,328	40			11,723	07	9,703	03	176,754	50
Net losses paid	70,681	90			5,861	54	4,829	46	81,372	90
Losses incurred	$ 169,345	71			$ 10,780	75	$ 9,633	52	$ 189,759	96

STATE OF MISSOURI } ss.
COUNTY OF ST. LOUIS }

B. G. Chapman, Jr., President, D. E. Monroe, Secretary, ..., Treasurer of the American Central Insurance Co., being duly sworn, each for himself deposes and says that they are the above-described officers of said company, and that on the thirty-first day of December last all of the above described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated, and that the foregoing statements, with the schedules and explanations therein contained, annexed or referred to, are a full and correct exhibit of all the assets, liabilities, income and disbursements, and of the condition and affairs of the said company on the said thirty-first day of December last, and for the year ending on that date, according to the best of their information, knowledge and belief, respectively.

B. G. Chapman, Jr., President.
D. E. Monroe, Secretary.

Subscribed and sworn to before me this 12th day of February, 1918.
(SEAL) W. J. Mills, Notary Public.
My commission expires September 21, 1921.

UNDERWRITING AND INVESTMENT EXHIBIT.

Showing the Source of the Increase and Decrease in Surplus during 1917.

UNDERWRITING EXHIBIT.

PREMIUMS.

1.	Total premiums, per items 7 and 8, page 2, $1,956,467.36, less $ None per item 33, page 3	$1,956,467 36		
2.	Add Unpaid Return and Reinsurance Premiums Dec. 31, 1916, per item 21, page 5, of the 1916 statement	None		
3.	Add Unearned Premiums Dec. 31, 1916, per item 10, and $ None reclaimable on perpetual insurance, per item 11, page 5, of the 1916 statement	1,819,024 51		
4.	Total	$3,775,491.87		
5.	Deduct Unearned Premiums Dec. 31, 1917, per item 10, and $ None reclaimable on perpetual insurance per item 11, page 5	1,832,326 98		
6.	PREMIUMS EARNED DURING 1917		$1,933,244.89	

UNDERWRITING PROFIT AND LOSS ITEMS.

7.	Gain from Agents' Balances previously charged off, per item 25, page 2, $310.41, and from other underwriting income, $ None per Income Exhibit, per 2 (a)	$310 41		
8.	Loss from Agents' Balances charged off, $1,105.14, and from other underwriting disbursements, $ None, per Disbursement Exhibit, page 3, other than losses and expenses per items 15 and 20 of this Exhibit (a)	1,105.14		
9.	(b) Loss from items 7 and 8	794.73		
10.	Agents' balances and bills receivable not admitted Dec. 31, 1916, per items 34 and 35, page 4, of 1916 statement, $7,420.39.			
11.	Agents' balances and bills receivable not admitted Dec. 31, 1917, per items 34 and 35, page 4, $7,062.66.			
12.	(b) Gain from items 10 and 11	357 73		
13.	(b) Loss from underwriting profit and loss items		437.00	
14.	UNDERWRITING INCOME EARNED DURING 1917			$1,932,807.89

19

25554

	LOSSES.				
15.	Losses paid, per item 3, page 3		$1,107,783 68		
16.	Deduct unpaid losses Dec. 31, 1916, per item 6, page 5, of 1916 statement		251,754 24		
17.	Balance		$856,029 44		
18.	Add unpaid losses Dec. 31, 1917, per item 6, page 6		270,757 95		
19.	LOSSES INCURRED DURING 1917			$1,126,787 39	
	UNDERWRITING EXPENSES.				
20.	(c) Underwriting expenses paid during 1917, per disbursement exhibit, page 3		$ 773,122 85		
21.	(a) Deduct underwriting expenses unpaid Dec. 31, 1916, per liability exhibit of 1916 statement, viz.:				
22.	Bills, $3,398.63; taxes $35,000		38,398 63		
23.	Balance		$ 734,724 22		
24.	(a) Add underwriting expenses unpaid Dec. 31, 1917, per liability exhibit, page 5, viz:				
25.	Bills, $4,545.97; taxes $50,000.00		54,545 97		
26.	UNDERWRITING EXPENSES INCURRED DURING 1917			789,270 19	
27.	UNDERWRITING LOSSES AND EXPENSES				$1,916,057 58
28.	(b) Gain from underwriting during 1917	$16,750 31			
	Carried forward	16,750 31			

(a) Give statement number of each item or portion thereof included herein.

(b) Write "Gain" or "Loss".

(c) In order to secure uniformity in the reports of the various companies, all companies are directed to include in this item all disbursements except payments to policyholders, per item 3; agents' balances charged off in item 38; repairs, expenses and taxes on real estate; such other taxes and fees as apply to investments and personal property only; dividends to stockholders; deposit premiums returned; loss on sale or maturity and decrease in book value of ledger assets, and such other items, if any, as are known to apply exclusively to the assets of the company and to deduct from the total of said items as investment expenses one-eighth of one per cent. of the mean invested assets, viz.: Real estate owned, mortgage loans, collateral loans, and stocks and bonds owned.

	INVESTMENT EXHIBIT.		GAIN IN SURPLUS.
	INTEREST AND RENTS. Brought forward		$16,750.31
29.	Interest, dividends and rents received during the year, per item 17, page 2	$156,260.40	
30.	Deduct interest, dividends and rents due and accrued Dec. 31, 1916, per item 24, page 4, of 1916 statement	40,479.21	
31.	Balance	$115,781.19	
32.	Add interest, dividends and rents due and accrued Dec. 31, 1917, per item 24, page 4	42,400.31	
33.	Add interest and rents paid in advance Dec. 31, 1916, per liability exhibit of 1915 statement	None	
34.	Total	$158,181.50	
35.	Deduct interest and rents paid in advance Dec. 31, 1917, per liability exhibit page 5	None	
36.	INTEREST AND RENTS EARNED DURING 1917		158,181.50
	PROFIT ON INVESTMENTS.		
37.	Gain from sale of ledger assets, per item 26, page 2	$2,817.50	
38.	Gain from increase in book value of ledger assets, per item 27, page 2	None	
39.	Gain from change in difference between book and market value during 1917	None	
40.	Gain from other investments, viz.: (Give items and amounts)	None	
41.			
42.	PROFIT ON INVESTMENTS DURING YEAR 1917		2,817.50
43.	INVESTMENT INCOME EARNED DURING 1917		$160,999.00
	LOSS ON INVESTMENTS		
44.	Loss from sale of ledger assets, per item 39, page 3	$1,215.00	
45.	Loss from decrease in book value of ledger assets, per item 40, page 3	7,416.45	
46.	Loss from change in difference between book and market value during 1917	120,847.38	
47.	Loss from other investments, viz.: (Give items and amounts)	None	
48.			
49.	LOSS ON INVESTMENTS DURING 1917		$129,478.83

INVESTMENT EXPENSES.

50.	(d) Investment expense paid during 1917, per disbursements exhibit, page 3 (attach exhibit)		$4,309 80		
	(Exhibit attached)				
	Page 9—Investment Expenses.				
	Investment assets December 31, 1916.				
	Bonds	$2,800,590 08			
	Stocks	436,028 11			
	Real estate loans	25,000 00			
	Collateral loans	79,500 00			
		$3,343,118 19			
	Invested assets December 31, 1917.				
	Bonds	3,043,528 63			
	Stocks	404,533 11			
	Real estate loans	25,000 00			
	Collateral loans	79,500 00			
		$3,552,561 74			
	Total	6,895,679 93			
	One-half mean invested	3,447,839 96			
	One-eighth of 1 % investment expense	4,309 80			
51.	(a) Deduct investment expenses unpaid Dec. 31, 1916, per liability exhibit of 1916 statement, viz.:		None		
52.		None			
53.	Balance	$4,309 80			
54.	(a) Add investment expenses unpaid Dec. 31, 1917, per liability exhibit page 5, viz.:				
55.		None			
56.	INVESTMENT EXPENSES INCURRED DURING 1917		4,309 80		
57.	INVESTMENT LOSSES AND EXPENSES DURING 1917			$133,788 63	
58.	(b) Gain from investments during 1917				$27,210 37

MISCELLANEOUS EXHIBIT.

		Gain in Surplus.	Loss in Surplus.		
59.	Dividends declared to stockholders during 1917		None		
60.	Dividends declared to policyholders during 1917		None		
61.	Receipts from home office	None			
62.	Remittances to home office		None		
63.	——crease in special reserves	None	None		
64.	Decrease on account of special deposits not admitted	$17,568 85			
65.	(a, b) Gain from other sources:				
66.	Unlisted securities	925 00			
67.	Reinsurance recoverable on paid loss %	1,812 13			
68.	Net (b) gain from items 59-67			$20,305 98	
69.	Total gains and losses in surplus during 1917			64,266 66	
70.	Surplus Dec. 31, 1916, per item 28, page 5, of 1916 statement.		$1,032,735 57		
71.	Surplus Dec. 31, 1917, per item 27, page 5		1,097,002 23		
72.	Increase in surplus during 1917 (enter in column to balance).				$64,266 66
73.	Totals			$64,266 66	$64,266 66

74. Per cent of losses incurred to premiums earned 58.28.
75. Per cent of underwriting expenses incurred to premiums earned 40.82.
76. Per cent of investment expenses incurred to interest and rents earned 2.72.
77. Per cent of total losses and expenses incurred and dividends declared to total income earned 91.51.

(a) Give statement number of each item or portion thereof included herein.
(b) Write "Gain" or "Loss".
(d) Include in this item one-eighth of one per cent of the mean invested assets; repairs, expenses and taxes on real estate; such other taxes and fees as apply to investments and personal property only, and such other items, if any, as are known to apply exclusively to the assets of the company.

NOTE.—In case the following schedules do not afford sufficient space, companies may furnish them on separate forms, provided the same are upon paper of like size and arrangement, containing the information asked for herein.

SPECIAL DEPOSIT SCHEDULE.

Showing deposits or investments NOT held for the protection of ALL the policyholders of the Company.

(1) State or Country	(2) DESCRIPTION OF DEPOSIT (Indicating literal form of registration of securities)	(3) Par Value	(4) Market Value	(5) Unearned Premiums	(6) Unpaid Losses and all other Liabilities	(7) Total Liabilities	(8) Market Value of Special Deposits in excess of corresponding Liabilities
Canada	Brandon, Manitoba, Debentures 4½%	$25,000 00	$20,250 00	$94,758 90	$13,657 84	$108,416 74	$35,607 33
	Calgary, Alberta, Debentures 5%	15,000 00	13,500 00				
	Canada Permanent Mortgage Corporation, Toronto, Debentures 4½%	25,000 00	25,000 00				
	Fort William, Ontario, Debentures 4½%	24,820 00	21,097 00				
	Fort William, Ontario, Debentures 5%	11,000 00	10,010 00				
	Toronto, Ontario, Debentures 4%	26,766 67	21,145 67				
	Victoria, B. C., Debentures 4%	30,660 00	24,221 40				
	Winnipeg, Manitoba, Debentures 4%	10,000 00	8,800 00				
Georgia	Atlanta Sewer Bonds, Registered 4½%	10,000 00	10,400 00	31,296 97	1,040 48	32,336 55	None
N. Carolina	County of Cumberland, Funding Bonds 5%	10,000 00	10,300 00	14,733 82	2,778 09	17,511 91	2,988 09
	Henderson, Vance Co., Street Bonds 5%	10,000 00	10,200 00				
New Mexico	Dona Ana Co., N. M., Funding Bonds 6%	10,000 00	10,000 00	15,897 28	1,655 29	17,552 57	None
Virginia	Richmond, Improvement Bonds 4%	50,000 00	48,000 00	24,886 66	11,610 62	36,497 28	14,502 72
	U. S. Government Liberty Loan Bonds 3½%	3,000 00	3,000 00				
	Totals	$261,246 67	$235,924 07	$181,572 73	$30,742 32	$212,315 05	$53,098 14

SCHEDULE E.

Showing name and location of company, and amount recoverable for reinsurance on paid and unpaid losses.

COMPANY	LOCATION	(A) PAID LOSSES	UNPAID LOSSES
Aachen and Munich Fire Ins. Co	Aix-la-Chappelle, Germany	$ 8.88	$ 12.18
Aetna Ins. Co	Hartford, Conn	1.84	47.50
Albany Ins. Co	Albany, New York		3,044.33
American Union Fire Ins. Co	Philadelphia, Pa	21.92	
Atlas Assurance Co., Ltd	London, England	1.84	
Boston Ins. Co	Boston, Mass		5,000.00
British-American Assurance Co	Toronto, Canada	1.84	332.16
California Ins. Co	San Francisco, Cal.		535.00
Camden Fire Ins. Association	Camden, N. J	125.31	3,449.89
Citizen's Insurance Co.	St. Louis, Mo		35.00
City of New York Ins. Co	New York, N. Y		102.50
Century Ins. Co., Ltd	Edinburgh, Scotland		45.00
Commercial-Union Assurance Co., Ltd	London, England		257,914.39
Connecticut Fire Ins. Co.	Hartford, Conn	.39	
Continental Ins. Co	New York, N. Y		7.00
Detroit Fire & Marine Ins. Co.	Detroit, Mich	8.91	1,893.99
Eagle and British Dominion General Ins. Co., Ltd	London, England	1.50	2,571.38
Farmers' Ins. Co.	York, Pa	9.36	2,140.00
Fire Association of Philadelphia	Philadelphia, Pa.		653.55
Firemen's Ins. Co	Newark, N. J		1,912.00
Firemen's Fund Ins. Co	San Francisco, Cal.	2.35	493.59
Franklin Fire Ins. Co.	Philadelphia, Pa.	8.00	
General Fire Assurance Co	Paris, France		152.50
German-American Ins. Co	New York, N. Y		1,710.50
German Alliance Ins. Co	New York, N. Y		40.00
German Fire Ins. Co	Wheeling, W. Va		2,799.28
Germania Fire Ins. Co.	New York, N. Y		61.00
Girard F. & M. Ins. Co.	Philadelphia, Pa.		595.75
Glens Falls Ins. Co	Glens Falls, N. Y		2.50

3560

SCHEDULE E—Continued.

COMPANY	LOCATION	(A) PAID LOSSES	UNPAID LOSSES
Hartford Fire Ins. Co	Hartford, Conn		$1,371.75
Home Ins. Co	New York, N. Y		104.00
Insurance Co. of North America	Philadelphia, Pa		25.90
Insurance Co. of State of Pennsylvania	Philadelphia, Pa		1,136.83
Liverpool & London & Globe Ins. Co	London, England	$523.64	1,093.58
Lloyds' London	London, England	12.00	930.12
London Assurance Corporation	London, England		11.78
London & Lancashire Fire Ins. Co	Liverpool, England		50.00
Lumbermen's Ins. Co	Philadelphia, Pa		262.25
Massachusetts F. & M. Ins. Co	Boston, Mass		61.00
Michigan Commercial Ins. Co	Lansing, Mich	2,665.88	6,050.54
Michigan F. & M. Ins. Co	Detroit, Mich	5.03	1,229.47
Milwaukee Mechanics Ins. Co	Milwaukee, Wis		4,500.00
Netherlands Fire and Life Ins. Co	Hague, Holland		4,501.49
Niagara Fire Ins. Co	New York, N. Y.	1.15	123.78
North British & Mercantile Ins. Co	London, England		669.00
Northwestern Assurance Co. Ltd.	London, England		20.00
Northwestern F. & M. Ins. Co	Minneapolis, Minn		15.00
Norwich Union Fire Ins. Society, Ltd	Norwich, England		42.50
Old Colony Ins. Co	Boston, Mass	8.00	
Palatine Ins. Co., Ltd	London, England		289.13
Patriotic Assurance Co., Ltd	Dublin, Ireland		17.50
Pennsylvania Fire Ins. Co	Philadelphia, Pa		3,392.05
People's National Fire Ins. Co. of Delaware	Philadelphia, Pa		15.00
Phoenix Ins. Co	Hartford, Conn	9.08	65.00
Providence Washington Ins. Co	Providence, R. I		5.00
Prussian National Ins. Co	Stettin, Germany		177.72
Queen Ins. Co. of America	New York, N. Y		2.62
Reinsurance Bureau	New York, N. Y	2,546.41	2,704.32
Reliance Ins. Co	Philadelphia, Pa		20.00

Rhode Island Ins. Co.	Providence, R. I.		2,553.39
Russia Insurance Co.	Petrograd, Russia	8,809.00	53,873.37
Royal Insurance Co. Ltd.	Liverpool, England		16,527.80
St. Paul F. & M. Ins. Co.	St. Paul, Minn.	135.11	11,319.48
Scottish Union & National Ins. Co.	Edinburgh, Scotland		46.90
Security Ins. Co.	New Haven, Conn.		1,730.01
Springfield F. & M. Ins. Co.	Springfield, Mass.		1,246.38
Sun Fire Insurance Office	London, England		50.00
Teutonia Fire Ins. Co.	Pittsburgh, Pa.		183.33
Twin City Fire Ins. Co.	Minneapolis, Minn.		5.00
Union Fire Ins. Co.	Paris, France		2,914.82
Virginia F. & M. Ins. Co.	Richmond, Va.		295.68
Westchester Fire Ins. Co.	New York, N. Y.		600.00
Western Assurance Co.	Toronto, Ontario	49.69	60.50
		$14,957.13	$405,804.98

NOTE—(A) Carry as ledger asset or non-ledger asset.

3562

SCHEDULE A—Part 1.

Showing all Real Estate OWNED December 31, 1917, the Cost, Book and Market Value thereof, the Nature and Amount of all Liens and Incumbrances thereon, including Interest Due and Accrued, Etc.

NONE.

SCHEDULE A—Part 2.

Showing all Real Estate ACQUIRED during 1917, and Showing also Amounts Expended for Additions and Permanent Improvements Made during said Year to ALL Real Estate.

NONE.

SCHEDULE A—Part 3.

Showing all Real Estate SOLD during 1917, including Payments during 1917 on "Sales under Contract."

NONE.

SCHEDULE B.

Showing all Mortgages owned by the ———— Insurance Company, December 31, 1917, and all Mortgage Loans made, increased, discharged, reduced or disposed of during 1917.

No.	DATE		RECORD OF MORTAGE			
	Year Given	Year Due	State	County	Book	Page
1	1913	1918	Mo.	C. of St. Louis	2173	234

No.	PRINCIPAL				INTEREST				
	Amount Unpaid Dec. 31 1916.	Amount Loaned During 1917 (A)	Amount Paid on Account or in Full During 1917 (B)	Amount Unpaid Dec. 31, 1917	Date Due	Rate of	Amount Past Due Dec. 31, 1917	Amount Accrued Dec. 31, 1917	Total Gross Amount Received During 1917
1	$25,000 00	None	None	$25,000 00	4-19 10-19	7% First Year 6%	None	$300 00	$1,500 00
Totals	$25,000 00			$25,000 00				$300 00	$1,500 00

No.	Value of Lands Mortgaged	Value of Buildings	Amount of Insurance Held by the Company on the Buildings	LOCATION AND DESCRIPTION (State if this mortgage is being foreclosed or if there are any prior liens.)
1	$65,000 00	None	None	Not being foreclosed—no prior lien. City of St. Louis, Mo., part of Lots 4 and 5, Graham's Subdivision of the Sulphur Spring Tract.
Totals	$65,000 00			

(A) Including all mortgages "purchased" or otherwise acquired in 1917 and all increases during 1917 on loans outstanding December 31, 1916.

(B) Including mortgages under which company has secured title and possession by foreclosure.

CLASSIFICATION.

Showing the total amount of Mortgage Loans on real estate in each State and Foreign Country.

NONE.

SCHEDULE C—Part 1.

Showing all Collateral Loans IN FORCE December 31, 1917, and all Substitutions of Collateral thereon during said year.

No.	Description of Securities Held as Collateral December 31, 1917 (Give in this column the number of shares of each block of stock and rate of interest and year of maturity on each bond held as collateral.)	Par Value	Rate Used to Obtain Market Value	Market Value December 31 1917	Amount Loaned Thereon	Date of Loan	Maturity of Loan
1	The Annuity Realty Co., St. Louis (40-year Participation Certificate, 5%, April, 1952)	$6,000 00	80	$4,800 00	$4,500 00	Dec. 10, 13	Demand
2	National Bank of Commerce in St. Louis, 1000 shares	100,000 00	113	113,000 00	75,000 00	Mch. 24, 16	Mch. 24, 18
	Totals	$106,000 00		$117,800 00	$79,500 00		

No.	INTEREST			
	Rate on Loan	Amount Past due Dec. 31 1917	Amount Accrued Dec. 31 1917	Amount Received During 1917
1	5½%	None	$61.88	$247.52
2	4½%	None	65.62	4,199.99
Totals			$127.50	$4,447.51

No.	SUBSTITUTIONS OF COLLATERAL, VIZ.:								Name of Actual Borrower
	Collateral Substituted				Collateral Released				
	Description	Date	Par Value	Market Value	Description	Date	Par Value	Market Value	
1	None				None				Robt. McK. Jones & John D Filley, Syndicate Mgrs.
2	None				None				Tom Randolph

Note—Insurance companies which have financed their employes in the purchase of bonds issued by the government for war purposes (each issue to be kept separate) may report the total amount and any other data in one item.

SCHEDULE C—Part 2.

Showing all Collateral Loans MADE during 1917, and all Substitutions of Collateral thereon during said Year.

NONE

SCHEDULE C—Part 3.

Showing all Collateral Loans DISCHARGED in whole or in part during 1917, and all Substitutions of Collateral thereon during said Year.

NONE

SCHEDULE D—PART 1.

Showing all Bonds owned by the Company December 31, 1917.

DESCRIPTION Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous securities. If bonds are "serial" issues, give amount matering each year.	INTEREST		YEAR OF		Book Value	Par Value	Rate Used to Obtain Market Value
	Rate of	How Paid	Maturity	Option			
STATE, COUNTY AND MUNICIPAL BONDS.							
United States Government Liberty Loan 1917	3½	JD	June, 1947		$100,150 00	$100,150 00	100
United States Government, Second Liberty Loan 1917	4	MN	Nov., 1942		75,550 00	75,550 00	100
United Kingdom of Great Britain and Ireland	5½	FA	Feb., 1918		9,968 75	10,000 00	100
Alberta, Province of, Debentures	4½	FA	Feb., 1924		14,550 00	15,000 00	94
Atlanta, Georgia, Sewer, Registered	4½	JJ	Jan., 1939		10,205 00	10,000 00	104
Bowie County, Texas, Road District No. 1	4½	AO	Apr., 1949		25,000 00	25,000 00	96
Brandon, Manitoba, City of, Debentures	4½	MN	May, 1942		23,082 50	25,000 00	81
Calgary, Alberta, City of, Debentures	5	JJ	Jan., 1933		14,698 50	15,000 00	90
Canada Permanent Mortgage Corporation Debenture	4½	MN	Nov., 1918		5,000 00	5,000 00	100
Canada Permanent Mortgage Corporation Debenture	4½	MN	May, 1919		20,000 00	20,000 00	100
Cumberland County, N. C., Funding	5	AO	Apr., 1933		10,320 50	10,000 00	103
Dona Ana County, N. M., Funding	6	JJ	July, 1925		10,000 00	10,000 00	100
Enid, Oklahoma, Storm Sewer	5	FA	Feb., 1934		19,423 32	19,000 00	101
Enid, Oklahoma, Water Works	5	FA	Feb., 1934		6,133 68	6,000 00	109
Fort William Ontario, City of, Debentures	4½	FA	Aug., 1937		23,060 26	24,820 00	85
Fort William, Ontario, City of, Debentures	5	FA	Feb., 1934		10,774 50	11,000 00	91
Fort Worth, Texas, Refunding	4	JJ	July, 1941		8,775 00	9,000 00	93
Henderson, Vance Co., N. C., Street	5	JD	June, 1953		10,000 00	10,000 00	102
Kansas City (Mo.), General Hospital	4	JJ	July, 1935		30,000 00	30,000 00	97
Kansas City (Mo.), Station Park Grading	4	JJ	July, 1935		70,000 00	70,000 00	97

COPY BOUND CLOSE

Newberry, S. C., School District	4½	JJ	July,	1949	10,353.00	10,000.00	94
New York City, N. Y., registered	4	MN	Nov.,	1956	200,460.00	200,000.00	98
Richmond, Virginia, Improvement	4	JJ		1940	50,571.00	50,000.00	96
St. Joseph, Mo. (City of), Funding	4	FA	Aug.,	1923	50,000.00	50,000.00	98
St. Louis, Mo. (City of), Public Buildings and Public Improvements	4	AO	Oct.,	1929	25,468.75	25,000.00	100
			Jan.,	1945	526.50	500.00	84
Selkirk, Manitoba	5	Jan.	Jan.,	1958	3,163.00	3,000.00	82
			Jan.,	1959	1,581.50	1,500.00	82
Toronto, Ontario, City of, Debentures	4	JJ	July,	1949	24,893.00	26,766.67	79
Victoria, B. C., Debentures	4	JJ	Jan.,	1937	26,401.32	30,660.00	79
Winnipeg, Manitoba, City of, Local Improvement Debentures	4	AO	Oct.,	1928	9,875.00	10,000.00	88
RAILROAD BONDS.							
Atchison, Topeka & Santa Fe, 100-year Adjustment, Stamped	4	MN	Nov.,	1995	22,968.75	25,000.00	84
Baltimore & Ohio, Pittsburgh, Lake Erie & W., Va. System, Refunding	4	MN	Nov.,	1941	23,875.00	25,000.00	83
Baltimore & Ohio, Secured Gold Notes, Series A	5	JJ	July,	1918	19,975.00	20,000.00	100
Central of Georgia, Consolidated Mortgage	5	MN	Nov.,	1945	53,580.25	50,000.00	98
Central Pacific, First Refunding	4	FA	Aug.,	1949	23,800.00	25,000.00	88
Chesapeake & Ohio, General Mortgage	4½	MS	Mar.,	1992	50,350.62	50,000.00	87
Chesapeake & Ohio, General Funding and Improvement	5	JJ	Jan.,	1929	49,640.62	50,000.00	92
Chicago Railways Co., First Mortgage	5	FA	Feb.,	1927	10,065.00	10,000.00	93
Chicago, Milwaukee & St. Paul, Debentures	4	JJ	July,	1934	23,812.50	25,000.00	86
Chicago, Rock Island & Pacific, First Refunding	4	AO	April,	1934	22,625.00	25,000.00	72
Chicago & Western Indiana Collateral Trust Gold Notes	6	MS	Sept.,	1918	24,812.50	25,000.00	100
Colorado & Southern, Refunding and Extension Mortgage	4½	MN	May,	1935	14,606.25	15,000.00	81
Columbia & St. Louis, First Mortgage	4	MN	May,	1942	28,000.00	32,000.00	75
East St. Louis & Suburban Co., N. J., Collateral Trust	5	AO	April,	1932	22,300.00	24,000.00	73
Fort Worth & Denver City, First Mortgage	6	JD	Dec.,	1921	27,521.87	25,000.00	180
Fort Worth & Rio Grande, First Mortgage	4	JJ	July,	1928	23,025.00	25,000.00	66

SCHEDULE D—PART 1—Continued.

Showing all Bonds owned by the Company December 31, 1917.

DESCRIPTION	INTEREST		YEAR OF		Book Value	Par Value	Rate Used to Obtain Market Value
Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous securities. If bonds are "serial" issues, give amount maturing each year.	Rate of	How Paid	Maturity	Option			
Great Northern, Collateral Trust Gold Notes	5	MS	Sept., 1920		$24,531 25	$25,000 00	99
Houston Belt & Terminal, First Mortgage Guaranteed Sinking Fund	5	JJ	July, 1937		50,000 00	50,000 00	92
Illinois Central, First and Refunding	4	MN	Nov., 1955		23,775 00	25,000 00	87
Illinois Central, St. Louis Division and Terminal, First Mortgage	3	JJ	July, 1951		7,100 00	10,000 00	71
Kanawha & Michigan, Second Mortgage	5	JJ	July, 1927		24,000 00	25,000 00	95
Kansas City, Fort Scott & Memphis, Refunding	4	AO	Oct., 1936		86,625 00	100,000 00	73
Kansas City Southern, First Mortgage	3	AO	April, 1950		7,150 00	10,000 00	66
Kansas City (Mo.), Railways Co., First Mortgage	5	JJ	July, 1944		16,975 00	17,500 00	94
Kansas City (Mo.), Termical Ry. Co., First Mortgage	4		July, 1960		44,250 00	50,000 00	85
Lake Shore & Michigan Southern, Debentures	4	MS	Sept., 1928		14,287 50	15,000 00	93
Lake Shore & Michigan Southern, Debentures	4	MN	May, 1931		8,862 50	10,000 00	92
Little Rock and Hot Springs Western, First Mortgage	4	JJ	July, 1939		27,868 75	30,000 00	70
Michigan Central, Notes	5	MN	May, 1918		19,925 00	20,000 00	100
Mississippi River & Bonne Terre, First Mortgage	5	AO	Oct., 1931		29,700 00	30,000 00	100
Missouri, Kansas & Texas, First and Refunding	4	MS	Sept., 2004		55,554 40	75,000 00	38
Missouri Pacific, Gold Loan, 1905	4	MS	Mar., 1945		47,640 62	50,000 00	60
New York Central, Notes	4½	MN	May, 1918		9,975 00	10,000 00	100
Norfolk & Western Divisional, First Lien and General Mortgage	4	JJ	July, 1944		8,712 50	10,000 00	86
Northern Pacific-Great Northern Joint (C. B. & Q. Coll.)	4	JJ	July, 1921		34,218 75	36,000 00	97
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]

COPY BOUND CLOSE

Rock Island-Frisco Terminal, First Mortgage	5	JJ	Jan., 1927	48,250 00	50,000 00	91
St. Clair, Madison & St. Louis Belt	4	JJ	Jan., 1951	30,430 00	38,000 00	67
St. Louis, Iron Mountain & Southern, Unifying and Refunding	4	JJ	July, 1929	69,187 50	75,900 00	80
St. Louis, Iron Mountain & Southern, General Consolidated Mort	5	AO	April, 1931	26,625 00	25,000 00	99
St. Louis, Iron Mountain & Southern, First Mort. River and Gulf	4	MN	May, 1933	43,500 00	50,000 00	76
St. Louis & San Francisco R. R. Co. (New) Prior Lien Mortgage, Series "A"	4	JJ	July, 1950	46,528 23	50,250 00	64
St. Louis & San Francisco R. R. Co., Adjustment Mortgage, Series "A"	6	AO	July, 1955	15,509 42	16,750 00	72
St. Louis Southwestern, First Consolidated Mortgage	4	JD	June, 1932	39,905 92	50,000 00	67
Southern Pacific, First Refunding Mortgage	4	JJ	Jan., 1955	46,828 13	50,000 00	89
Tennessee Central, General Mortgage	5	JJ	Jan., 1954	123,093 87	233,000 00	10
Tennessee Central R. R., General Mortgage, re Advance for Interest on Prior Lien Bonds	5	JJ	Jan., 1954	467 67	467 67	
Terminal Railroad Association of St. Louis, Genl. Mort. Refg. Sinking Fund	4	JJ	Jan., 1953	22,093 75	25,000 00	84
Union Depot, First Mortgage	6	JD	June, 1918	50,993 75	50,000 00	100
Union Pacific, Convertible	4	JJ	July, 1927	13,462 50	15,000 00	91
United Railways, First General Mortgage	4	JJ	July, 1934	43,873 90	50,000 00	60
Virginian, First Mortgage	5	MN	May, 1962	24,750 00	25,000 00	94
Western Pacific, First Mortgage Series "A" (new)	5	M8	Mar., 1946	9,000 00	10,000 00	87
Western Maryland, First Mortgage	4	AO	Oct., 1952	21,750 00	25,000 00	70
Wichita Falls & Northwestern, First and Refunding Mortgage	5	JJ	Jan., 1940	24,250 00	25,000 00	60
MISCELLANEOUS BONDS.						
Annuity Realty Co., St. Louis, 40-year Participation Certificate	5	JAJO	April, 1952	24,840 00	27,000 00	80
Frisco Annex Realty Co., First Mortgage	5	AO	Oct., 1928	39,000 00	39,000 00	92
Lincoln Real Estate & Building Co	6	AO	April, 1923	87,332 31	75,000 00	50
Missouri Electric Light & Power Co., Second Mortgage	6	FMAN	May, 1921	94,770 00	88,900 00	104
Mortgage Bond Co. of New York	4	AO	Oct., 1966	21,725 00	25,000 00	75
Pacific Telephone & Telegraph Co., First Mortgage	5	JJ	Jan., 1937	23,984 47	25,000 00	98

SCHEDULE D—PART 1—Continued.

Showing all Bonds owned by the Company December 31, 1917.

DESCRIPTION Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous securities. If bonds are "serial" issues, give amount maturing each year.	INTEREST		YEAR OF		Book Value	Par Value	Rate Used to Obtain Market Value
	Rate of	How Paid	Maturity	Option			
Railway Exchange Building Co., St. Louis, First Mortgage	5	S	Sept., 1952		$31,250 00	$41,666 66	75
Southern Bell Telephone & Telegraph Co., First Mortgage Sinking Fund	5	JJ	Jan., 1941		49,500 00	50,000 00	99
Underwriters Building Co., New York, First Mortgage	5	JJ	July, 1928		19,000 00	19,000 00	100
Wright Building Co., St. Louis	5	JJ	July, 1931		70,125 00	75,000 00	91
Totals					$3,043,528 63	$3,284,581 00	

SCHEDULE D—PART 1—Continued.

Showing all Bonds owned by the Company December 31, 1917.

DESCRIPTION Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous securities. If bonds are "serial" issues, give amount maturing each year.	Market Value (Excluding accrued Interest).	Actual Cost (Excluding Accrued Interest).	INTEREST.		Decrease by Adjustment in Book Value During 1917.
			Amount Due and Accrued Dec. 31, 1917.	Gross Amount Rec'd During 1917.	
STATE, COUNTY AND MUNICIPAL BONDS.					
United States Government Liberty Loan 1917	$100,150 00	$100,150 00	$198 54	$1,700 12	None
United States Government, Second Liberty Loan 1917	75,550 00	75,550 00	377 75	None	None
United Kingdom of Great Britain and Ireland	10,000 00	9,968 75	229 15	None	None
Alberta, Province of, Debentures	14,100 00	14,550 00	281 25	675 00	None
Atlanta, Georgia, Sewer, Registered	10,400 00	10,215 00	225 00	450 00	$10 00
Bowie County, Texas, Road District No. 1	24,000 00	25,000 00	281 25	1,125 00	None
Brandon, Manitoba, City of, Debentures	20,250 00	23,062 50	187 50	1,125 00	None
Calgary, Alberta, City of, Debentures	13,500 00	14,698 50	375 00	750 00	None
Canada Permanent Mortgage Corporation Debentures	5,000 00	5,000 00	37 50	225 00	None
Canada Permanent Mortgage Corporation Debentures	20,000 00	20,000 00	150 00	900 00	None
Cumberland County, N. C., Funding	10,300 00	10,341 50	125 00	500 00	21 00
Dona Ana County, N. M., Funding	10,000 00	10,000 00	300 00	600 00	None
Enid, Oklahoma, Storm Sewer	19,190 00	19,449 16	395 83	950 00	25 84
Enid, Oklahoma, Water Works	6,540 00	6,141 84	125 00	300 00	8 16
Fort William, Ontario, City of, Debentures	21,097 00	23,060 26	465 40	1,116 90	None
Fort William, Ontario, City of, Debentures	10,010 00	10,774 50	229 15	550 00	None
Fort Worth, Texas, Refunding	8,370 00	8,775 00	180 00	360 00	None
Henderson, Vance Co., N. C., Street	10,200 00	10,000 00	41 66	500 00	None
Kansas City (Mo.), General Hospital	29,100 00	30,000 00	600 00	1,200 00	None
Kansas City (Mo.) Station Park Grading	67,900 00	70,000 00	1,400 00	2,800 00	None
Newberry, S. C., School District	9,400 00	10,364 00	225 00	450 00	11 00
New York City, N. Y., Registered	196,000 00	200,480 00	1,333 33	8,000 00	20 00
Richmond, Virginia, Improvement	48,000 00	50,598 00	1,000 00	2,000 00	27 00
St. Joseph, Mo. (City of), Funding	49,000 00	50,000 00	833 33	2,000 00	None

SCHEDULE D—PART 1—Continued.

Showing all Bonds owned by the Company December 31, 1917.

DESCRIPTION Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous securities. If bonds are "serial" issues, give amount maturing each year.	Market Value (Excluding accrued Interest).	Actual Cost (Excluding Accrued Interest).	INTEREST.		Decrease by Adjustment in Book Value During 1917.
			Amount Due and Accrued Dec. 31, 1917.	Gross Amount Rec'd During 1917.	
St. Louis, Mo. (City of), Public Buildings and Public Improvements	$25,000 00	$25,468 75	$250 00	$1,000 00	None
	420 00	527 50	25 00	25 00	$1 00
Selkirk, Manitoba	2,460 00	3,167 00	150 00	150 00	4 00
	1,230 00	1,583 50	75 00	75 00	2 00
Toronto, Ontario, City of, Debentures	21,145 67	24,893 00	535 33	1,070 66	None
Victoria, B. C., Debentures	24,221 40	26,401 32	613 20	1,226 40	None
Winnipeg, Manitoba, City of, Local Improvement Debentures	8,800 00	9,875 00	100 00	400 00	None
RAILROAD BONDS.					
Atchison, Topeka & Santa Fe, 100-year Adjustment, Stamped	21,000 00	22,968 75	166 66	1,000 00	None
Baltimore & Ohio, Pittsburgh, Lake Erie & W., Va. System, Refunding	20,750 00	23,875 00	166 66	1,000 00	None
Baltimore & Ohio, Secured Gold Notes, Series A	20,000 00	19,975 00	500 00	None	None
Central of Georgia, Consolidated Mortgage	49,000 00	53,712 00	416 66	2,500 00	131 75
Central Pacific, First Refunding	22,000 00	23,800 00	416 66	1,000 00	None
Baltimore & Ohio, General Mortgage	43,500 00	50,355 00	750 00	2,250 00	4 38
Chesapeake & Ohio, General Funding and Improvement	46,000 00	49,640 62	1,250 00	2,500 00	None
Chicago Railways Co., First Mortgage	9,300 00	10,070 00	208 33	500 00	5 00
Chicago, Milwaukee & St. Paul, Debentures	21,500 00	23,812 50	500 00	1,000 00	None
Chicago, Rock Island & Pacific, First and Refunding	18,000 00	22,625 00	None	None	None
Chicago & Western Indiana, Collateral Trust Gold Notes	25,000 00	24,812 50	500 00	None	None

Notes	25,000 00	24,812 50	500 00	None	None
Colorado & Southern, Refunding and Extension Mortgage	12,150 00	14,606 25	112 50	675 00	None
Columbia & St. Louis, First Mortgage	24,000 00	28,000 00	213 33	1,280 00	None
East St. Louis & Suburban Co., N. J., Collateral Trust	20,880 00	22,320 00	300 00	1,200 00	None
Fort Worth & Denver City, First Mortgage	25,750 00	28,150 00	125 00	1,500 00	628 13
Fort Worth & Rio Grande, First Mortgage	16,500 00	23,025 00	500 00	1,000 00	None
Great Northern, Collateral Trust Gold Notes	24,750 00	24,531 25	416 66	None	None
Houston Belt & Terminal, First Mortgage Guaranteed	46,000 00	50,000 00	1,250 00	2,500 00	None
Sinking Fund	21,750 00	23,775 00	166 66	1,000 00	None
Illinois Central, First and Refunding	7,100 00	7,100 00	150 00	300 00	None
Illinois Central, St. Louis Division and Terminal, First Mortgage	23,750 00	24,000 00	625 00	1,250 00	None
Kanawha & Michigan, Second Mortgage	73,000 00	86,625 00	1,000 00	4,000 00	None
Kansas City, Fort Scott & Memphis, Refunding	6,600 00	7,150 00	75 00	300 00	None
Kansas City Southern, First Mortgage	16,450 00	16,975 00	437 50	875 00	None
Kansas City (Mo.), Railways Co., First Mortgage	42,500 00	44,250 00	1,000 00	2,000 00	None
Kansas City (Mo.), Terminal Ry. Co., First Mortgage	13,950 00	14,287 50	200 00	600 00	None
Lake Shore & Michigan Southern, Debentures	9,200 00	8,862 50	66 66	400 00	None
Lake Shore & Michigan Southern, Debentures	21,000 00	27,868 75	600 00	1,200 00	None
Little Rock & Hot Springs Western, First Mortgage	20,000 00	19,925 00	125 00	500 00	None
Michigan Central, Notes	30,000 00	29,700 00	375 00	1,500 00	None
Mississippi River & Bonne Terre, First Mortgage	28,500 00	55,554 40	None	None	None
Missouri, Kansas & Texas, First and Refunding	30,000 00	47,640 62	None	None	None
Missouri Pacific, Gold Loan, 1905	10,000 00	9,975 00	75 00	225 00	None
New York Central, Notes	8,600 00	8,712 50	200 00	400 00	None
Norfolk & Western Divisional, First Lien and General Mortgage	24,250 00	24,218 75	500 00	1,100 00	None
Northern Pacific-Great Northern Joint (C., B. & Q. Coll.)	9,000 00	9,387 50	33 33	400 00	None
Oregon Short Line, Refunding	45,500 00	48,250 00	1,250 00	2,500 00	None
Rock Island-Frisco Terminal, First Mortgage	25,460 00	30,430 00	760 00	1,520 00	None
St. Clair, Madison & St. Louis Belt	60,000 00	69,187 50	1,500 00	3,000 00	None
St. Louis, Iron Mountain & Southern, Unifying and Refunding	24,750 00	26,750 00	312 50	1,250 00	125 00
St. Louis, Iron Mountain & Southern, General Consolidated Mort					

SCHEDULE D—PART 1—Continued.

Showing all Bonds owned by the Company December 31, 1917.

DESCRIPTION Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous securities. If bonds are "serial" issues, give amount maturing each year.	Market Value (Excluding accrued Interest).	Actual Cost (Excluding Accrued Interest).	INTEREST.		Decrease by Adjustment in Book Value During 1917.
			Amount Due and Accrued Dec. 31, 1917.	Gross Amount Rec'd During 1917.	
St. Louis, Iron Mountain & Southern, First Mort. River and Gulf	$38,000 00	$43,500 00	$333 33	$2,000 00	None
St. Louis & San Francisco R. R. Co. (New) Prior Lien Mortgage, Series "A"	32,160 00	46,528 23	1,005 00	4,020 00	None
St. Louis & San Francisco R. R. Co., Adjustment Mortgage, Series "A"	12,060 00	15,509 42	251 25	2,010 00	None
St. Louis Southwestern, First Consolidated Mortgage	23,500 00	39,905 92	166 66	2,000 00	None
Southern Pacific, First Refunding Mortgage	44,500 00	46,828 13	1,000 00	2,000 00	None
Tennessee Central, General Mortgage	23,200 00	123,093 87	None	None	None
Tennessee Central R. R., General Mortgage, re Advances for Interest on Prior Lien Bonds	467 67	467 67	13 98	None	None
Terminal Railroad Association of St. Louis, Genl. Mort. Refg. Sinking Fund	21,000 00	22,093 75	500 00	1,000 00	None
Union Depot, First Mortgage	50,000 00	52,981 25	250 00	3,000 00	$1,987 50
Union Pacific, Convertible	12,650 00	13,462 50	300 00	600 00	None
Union Railways, First General Mortgage	30,000 00	43,873 90	1,000 00	2,000 00	None
Virginian, First Mortgage	23,500 00	24,750 00	208 33	1,250 00	None
Western Pacific, First Mortgage, Series "A" (new)	8,700 00	9,000 00	166 66	590 28	None
Western Maryland, First Mortgage	17,500 00	21,750 00	250 00	1,000 00	None
Wichita Falls & Northwestern, First and Refunding Mortgage	15,000 00	24,250 00	625 00	625 00	None

MISCELLANEOUS BONDS.					
Annuity Realty Co., St. Louis, 40-year Participation Certificate	21,600 00	24,840 00	337 50	1,350 00	None
Frisco Annex Realty Co., First Mortgage	35,880 00	39,000 00	487 50	1,950 00	None
Lincoln Real Estate & Building Co.	37,500 00	89,802 00	None	None	2,469 69
Missouri Electric Light & Power Co., Second Mortgage	91,520 00	96,705 00	880 00	5,280 00	1,935 00
Mortgage Bond Co. of New York	18,750 00	21,725 00	250 00	1,000 00	None
Pacific Telephone & Telegraph Co., First Mortgage	24,500 00	23,984 47	625 00	1,250 00	None
Railway Exchange Building Co., St. Louis, First Mortgage	31,250 00	31,250 00	None	None	None
Southern Bell Telephone & Telegraph Co., First Mortgage Sinking Fund	49,500 00	49,500 00	1,250 00	2,500 00	None
Underwriters Building Co., New York, First Mortgage	19,000 00	19,000 00	475 00	950 00	None
Wright Building Co., St. Louis	68,250 00	70,125 00	1,875 00	3,750 00	None
Totals	$2,649,861 74	$3,050,945 08	$40,839 49	$116,474 36	$7,416 45

SCHEDULE D--PART 2.

Showing all STOCKS OWNED BY THE COMPANY, December 31, 1917.

No. of Shares	DESCRIPTION Give complete and accurate description of all stocks owned, including location of all street railway, bank, trust and miscellaneous securities	Book Value	Par Value	Rate Used to Obtain Market Value	Market Value
1650	Pennsylvania R. R. Co., Philadelphia	$107,391 86	$82,500 00	108	$89,100 00
137 1/2	Western Pacific Ry. Co., Non-cumulative, Preferred	8,971 87	13,750 00	46	6,325 00
23	Western Pacific Ry. Co., Common	15,496 88	23,750 00	18	4,275 00
95	Mercantile Trust Company, St. Louis	32,822 50	9,500 00	349	33,155 00
200	St. Louis Union Trust Co., St. Louis	75,675 00	20,000 00	349	69,800 00
250	Third National Bank, St. Louis	76,250 00	25,000 00	237	50,250 00
2	General Adjustment Bureau, New York	100 00	100 00	100	100 00
500	Hagardine-McKittrick D. G. Co., St. Louis, 1st pfd.	60,000 00	50,000 00	0	
54 1/2	Missouri Coal and Land Co.	32,000 00	5,450 00	400	21,800 00
4	Southern Adjustment Bureau, Atlanta, Ga.	200 00	200 00	100	100 00
5	Underwriters Salvage Company, Chicago	500 00	500 00	100	500 00
1	Western Adjustment & Inspection Co., Chicago	125 00	100 00	100	200 00
	Totals	$404,533 11	$230,850 00		$275,605 00

No. of Shares	DESCRIPTION Give complete and accurate description of all stocks owned, including location of all street railway, bank, trust and miscellaneous securities.	Actual Cost	DIVIDENDS Rate of in each of last three years 1915	1916	1917	Amount Received During 1917	Increase by Adjustment in Book Value During 1917	Decrease by Adjustment in Book Value During 1917
1650	Pennsylvania R. R. Co., Philadelphia	$102,391 86	6	6	6	$4,950 00	None	None
137½	Western Pacific Ry. Co., Non-cumulative, Preferred	8,971 87	None	None	None	None	"	"
23	Western Pacific Ry. Co., Common	15,496 88	"	"	"	"	"	"
96	Mercantile Trust Company, St. Louis	32,822 50	18	18	18	2,090 00	"	"
200	St. Louis Union Trust Co., St. Louis	75,675 00	16	16	16	3,200 00	"	"
250	Third National Bank, St. Louis	76,250 00	12	12	12	3,750 00	"	"
2	General Adjustment Bureau, New York	100 00	10	10	10	10 00	"	"
500	Hargadine-McKittrick D. G. Co., St. Louis, 1st pfd.	60,000 00	None	None	None	None	"	"
54½	Missouri Coal and Land Co.	32,000 00	"	"	"	"	"	"
4	Southern Adjustment Bureau, Atlanta, Ga.	200 00	"	"	"	"	"	"
5	Underwriters Salvage Company, Chicago	500 00	8	8	10	50 00	"	"
1	Western Adjustment & Inspection Co., Chicago	125 00				75 06	"	"
	Totals	$404,533 11				$14,125 06		

3578

SCHEDULE D—PART 3.

Showing all bonds and stocks ACQUIRED during 1917.

DESCRIPTION (Full name and number of shares of each block of stock. Full name, rate of interest and date of maturity of bonds)			Date Acquired	NAME OF VENDOR
Baltimore & Ohio Railroad Company, Secured Gold Notes, Series A	5%	July 1, 1918	Sept. 5	G. H. Walker & Company.
Chicago & Western Indiana Railroad Company, Collateral Trust Gold Notes	6%	Sept. 1, 1918	Sept. 5	G. H. Walker & Company.
General Adjustment Bureau, New York			Dec. 13,1905	Transfer from Schedule X.
Great Northern Railway Company, Collateral Trust Gold Notes	5%	Sept. 1, 1920	Sept. 5	G. H. Walker & Company.
Michigan Central Railroad Company, Notes	5%	May 15, 1918	Sept. 6	A. G. Edwards & Sons.
New York Central Railroad Company, Notes	4½%	May 1, 1918	Sept. 15	Commercial Union Assurance Company, Limited.
Southern Adjustment Bureau, Atlanta, Ga.			June 14,1909 May 5, 1910	Transfer from Schedule X.
Underwriters Salvage Company, Chicago			Jan. 19, 1906	Transfer from Schedule X.
United States Government, Certificate of Indebtedness	3%	July 17, 1917	May 15	Mississippi Valley Trust Co.
United States Government, Certificates of Indebtedness	3%	July 17, 1917	May 16	Merchants-Laclede Nat'l Bank.
United States Government, Certificate of Indebtedness	3%	July 17, 1917	May 16	Mercantile Trust Company.
United States Government, Certificate of Indebtedness	3%	July 17, 1917	May 22	State National Bank.
United States Government, Certificate of Indebtedness	3%	July 17, 1917	May 23	St. Louis Union Bank.
United States Government, Liberty Loan Bonds	3½%	June 15, 1947	June 26	State National Bank.
United States Government, Liberty Loan Bonds	3½%	June 15, 1947	June 26	Third National Bank.
United States Government, Liberty Loan Bonds	3½%	June 15, 1947	June 28	St. Louis Union Bank.
United States Government, Liberty Loan Bonds	3½%	June 15, 1947	Nov. 10	Hamilton & Lewis, Carbondale, Illinois.
United States Government, Second Liberty Loan of 1917	4%	Nov. 15, 1942	Nov. 13	Goldsby & Riggle, Flora, Illinois.
United States Government, Second Liberty Loan of 1917	4%	Nov. 15, 1942	Nov. 15	Subscription.
United States Government, Second Liberty Loan of 1917	4%	Nov. 15, 1942	Nov. 16	B. J. Fisher, Martin, Tennessee.
United States Government, Second Liberty Loan of 1917	4%	Nov. 15, 1942	Nov. 30	Clark F. Carey, Hibbing, Minn.
United States Government, Liberty Loan of 1917	4%	Nov. 15, 1942	Dec. 19	B. J. Fisher, Martin, Tennessee.
United Kingdom of Great Britian and Ireland	5½%	Feb. 1, 1918	Sept. 15	Commercial Union Assurance Company, Limited.
Western Adjustment & Inspection Co., Chicago			Feb. 9, 1904	Transfer from Schedule X.

COPY BOUND CLOTH

CLOSE IN CENTER

Western Adjustment & Inspection Co., Chicago ... Feb. 9, 1904 ... Transfer from Schedule X.

DESCRIPTION (Full name and number of shares of each block of stock. Full name, rate of interest and date of maturity of bonds.)	Cost to Company (Excluding accrued interest on bonds)	Book Value	Par Value	Paid for accrued interest on Bonds acquired during 1917
Baltimore & Ohio Railroad Company, Secured Gold Notes, Series A ... 5% July 1, 1918	$19,975 00	$19,975 00	$20,000 00	$177 78
Chicago & Western Indiana Railroad Company, Collateral Trust Gold Notes ... 6% Sept. 1, 1918	24,812 50	24,812 50	25,000 00	16 67
General Adjustment Bureau, New York	100 00	100 00	100 00	None
Great Northern Railway Company, Collateral Trust Gold Notes ... 5% Sept. 1, 1920	24,531 25	24,531 25	25,000 00	13 89
Michigan Central Railroad Company, Notes ... 5% May 15, 1918	19,925 00	19,925 00	20,000 00	308 34
New York Central Railroad Company, Notes ... 4½% May 1, 1918	9,975 00	9,975 00	10,000 00	165 00
Southern Adjustment Bureau, Atlanta, Ga	200 00	200 00	200 00	None
Underwriters Salvage Co., Chicago	500 00	500 00	500 00	None
United States Government, Certificate of Indebtedness ... 3% July 17, 1917	100,000 00	100,000 00	100,000 00	41 10
United States Government, Certificate of Indebtedness ... 3% July 17, 1917	50,000 00	50,000 00	50,000 00	25 00
United States Government, Certificate of Indebtedness ... 3% July 17, 1917	50,000 00	50,000 00	50,000 00	24 00
United States Government, Certificate of Indebtedness ... 3% July 17, 1917	50,000 00	50,000 00	50,000 00	50 00
United States Government, Certificate of Indebtedness ... 3% July 17, 1917	50,000 00	50,000 00	50,000 00	54 17
United States Government, Liberty Loan Bonds ... 3½% June 15, 1947	50,000 00	50,000 00	50,000 00	52 73
United States Government, Liberty Loan Bonds ... 3½% June 15, 1947	20,000 00	20,000 00	20,000 00	20 60
United States Government, Liberty Loan Bonds ... 3½% June 15, 1947	30,000 00	30,000 00	30,000 00	37 29
United States Government, Liberty Loan Bonds ... 3½% June 15, 1947	150 00	150 00	150 00	2 10
United States Government, Second Liberty Loan of 1917 ... 4% Nov. 15, 1942	50 00	50 00	50 00	None
United States Government, Second Liberty Loan of 1917 ... 4% Nov. 15, 1942	75,000 00	75,000 00	75,000 00	None
United States Government, Second Liberty Loan of 1917 ... 4% Nov. 15, 1942	100 00	100 00	100 00	None
United States Government, Second Liberty Loan of 1917 ... 4% Nov. 15, 1942	300 00	300 00	300 00	None
United States Government, Liberty Loan of 1917 ... 4% Nov. 15, 1942	100 00	100 00	100 00	None
United Kingdom of Great Britian and Ireland ... 5½% Feb. 1, 1918	9,968 75	9,968 75	10,000 00	59 58
Western Adjustment & Inspection Co., Chicago	125 00	125 00	100 00	None
	$585,812 50	$585,812 50	$586,600 00	$1,048 25

36980

SCHEDULE D—PART 4.

Showing all bonds and stocks, SOLD, REDEEMED or otherwise DISPOSED OF during 1917.

DESCRIPTION (Full name and number of shares of stock. Full name, rate of interest and date of maturity of bonds.)	Date Sold	NAME OF PURCHASER	Consideration (Excluding accrued interest on bonds.)	Par Value
Boatmen's Bank, St. Louis, 90 shares	January 30	A. G. Edwards & Sons	$9,405.00	$9,000.00
Canadian Northern Railway, Equipment First Mortgage, Series R, 1908, 4½% March 1, 1917	March 19	Redeemed	25,000.00	25,000.00
City of Peirce City, Missouri, Funding, 5% Sept. 15, 1917	March 22	Redeemed	5,000.00	5,000.00
City of Peirce City, Missouri, Funding, 5% Sept. 15, 1917	March 23	Redeemed	1,000.00	1,000.00
City of Peirce City, Missouri, Funding, 5% Sept. 15, 1917	Sept. 28	Redeemed	5,000.00	5,000.00
Union Sand & Material Company, 300 shares	January 2	G. H. Walker & Company	24,150.00	30,000.00
Underwriters Building Company, of New York, First Mortgage, 5% July 1, 1928	July 7	Redeemed	1,000.00	1,000.00
United States Government, Certificate of Indebtedness, 3% July 17, 1917	July 7	Mississippi Valley Trust Company	100,000.00	100,000.00
United States Government, Certificate of Indebtedness, 3% July 17, 1917	July 7	Merchants-Laclede National Bank	50,000.00	50,000.00
United States Government, Certificate of Indebtedness, 3% July 17, 1917	June 18	Mercantile Trust Company	50,000.00	50,000.00
United States Government, Certificate of Indebtedness, 3% July 17, 1917	June 26	State National Bank	50,000.00	50,000.00
United States Government, Certificate of Indebtedness, 3% July 17, 1917	June 26	Third National Bank	20,000.00	20,000.00
United States Government, Certificate of Indebtedness, 3% July 17, 1917	June 26	St. Louis Union Bank	30,000.00	30,000.00
			$370,555.00	$376,000.00

	Cost to	Increase by	Decrease by		Interest

DESCRIPTION (Full name and number of shares of stock. Full name, rate of interest and date of maturity of bonds.)	Cost to Company (Excluding accrued interest on Bonds.)	Book Value at Date of Sale	Increase by Adjustment in Book Value During 1917	Decrease by Adjustment in Book Value During 1917	Profit on Sale	Loss on Sale	Interest and Dividends Rec'd During 1917 (Including accrued interest on bonds sold.)
Boatmen's Bank, St. Louis, 90 shares	$10,620.00	None	None	None	None	$1,215.00	None
Canadian Northern Railway, Equipment, First Mortgage, Series R, 1908, 4½%, March 1, 1917	22,532.50	$22,532.50	None	None	$2,467.50	None	$562.50
City of Peirce City, Missouri, Funding, 5%, Sept. 15, 1917	5,000.00	5,000.00	None	None	None	None	250.00
City of Peirce City, Missouri, Funding, 5%, Sept. 15, 1917	1,000.00	1,000.00	None	None	None	None	25.00
City of Peirce City, Missouri, Funding, 5%, Sept. 15, 1917	5,000.00	5,000.00	None	None	None	None	125.00
Union Sand & Material Company, 300 shares	23,800.00	23,800.00	None	None	350.00	None	None
Underwriters Building Companyof New York, First Mortgage, 5%, July 1, 1928	1,000.00	1,000.00	None	None	None	None	50.00
United States Government, Certificate of Indebtedness, 3%, July 17, 1917	100,000.00	100,000.00	None	None	None	None	460.27
United States Government, Certificate of Indebtedness, 3%, July 17, 1917	50,000.00	50,000.00	None	None	None	None	230.15
United States Government, Certificate of Indebtedness, 3%, July 17, 1917	50,000.00	50,000.00	None	None	None	None	158.32
United States Government, Certificate of Indebtedness, 3%, July 17, 1917	50,000.00	50,000.00	None	None	None	None	189.00
United States Government, Certificate of Indebtedness, 3%, July 17, 1917	20,000.00	20,000.00	None	None	None	None	77.20
United States Government, Certificate of Indebtedness, 3%, July 17, 1917	30,000.00	30,000.00	None	None	None	None	120.00
	$368,952.50	$368,952.50			$2,817.50	$1,215.00	$2,247.44

SCHEDULE X—UNLISTED ASSETS.

Showing all property owned by the ..... , or in which it had any interest, on the 31st day of December, 1917, which is not entered on any other schedule and which is not included in the finished statement for the year 1917.

NONE.

SCHEDULE N.

Showing all balances according to the company's records carried in each bank or trust company on the last day of each month of the year 1917.

BANK OR TRUST COMPANY	January 31	February 28	March 31	April 30	May 31	June 30	July 31
Merchants-Laclede National Bank, St. Louis	$53,904 78	$33,482 83	$20,784 04	$43,215 12	$4,9337 67	$62,028 39	$62,642 29
Mississippi Valley Trust Company, St. Louis	100,871 77	101,103 65	101,361 45	101,611 17			
National Bank of Commerce, St. Louis	158,616 38	133,192 45	57,704 62	84,650 16	132,778 15	113,105 86	165,576 67
National Bank of Commerce, New York	31,878 89	18,501 59	28,516 57	71,027 37	33,134 37	64,716 38	46,722 14
State National Bank, St. Louis	50,371 99	50,500 15	50,616 37	50,745 29			
Third National Bank, St. Louis	19,299 82	16,757 14	6,074 21	9,562 44	14,060 58	18,127 22	7,023 19
Union Bank of Canada, Winnipeg, Manitoba	20,325 83	6,085 45	36,151 10	37,767 55	28,875 56	7,258 61	14,084 25
	$435,269 46						
Bank of San Francisco, California	15,323 85						
Totals	$450,593 31	$359,623 26	$301,208 36	$398,579 10	$258,186 28	$265,236 57	$296,048 54

BANK OR TRUST COMPANY	August 31	September 30	October 31	November 30	December 31	Rate of Interest	Amount of Interest Received during 1917
Merchants-Laclede National Bank, St. Louis	$73,810.28	$ 71,147.68	$97,931.46	$92,267.54	$84,888.47	2%	$1,158.40
Mississippi Valley Trust Company, St. Louis							1,170.92
National Bank of Commerce, St. Louis	171,099.74	160,401.89	124,071.69	187,335.81	260,365.82	2%	2,883.63
National Bank of Commerce, New York	43,730.78	18,938.07	39,224.92	31,846.59	73,247.94	2%	1,313.51
State National Bank, St. Louis							667.95
Third National Bank, St. Louis	11,242.32	15,078.91	66,457.32	4,612.28	12,670.19	2%	342.24
Union Bank of Canada, Winnipeg, Manitoba	24,765.15	10,225.17	29,438.50	30,158.13	38,636.09	2%	358.81
					$469,808.51		$7,895.46
Bank of California, San Francisco					13,759.93		
Totals	$324,648.27	$275,791.72	$357,123.89	$346,220.35	$483,568.44		

$595

SCHEDULE OF REINSURANCES
of the
AMERICAN CENTRAL INSURANCE COMPANY.
In force December 31, 1917.

Company	Location	Amount	Premium
Aachen & Munich Fire	Aix-la-Chapelle, Germany	$734,876	$2,988 21
Aetna	Hartford, Conn.	1,427,242	11,968 27
Agricultural	Watertown, N. Y.	211,660	1,255 22
Albany	Albany, N. Y.	1,066 129	8,778 71
Allegheny Fire	Pittsburgh, Pa	5 000	16 15
Allemania Fire	Pittsburgh, Pa	7,118	101 75
Alliance	Philadelphia, Pa	13,237	60 76
American	Newark, N. J.	36,425	565 83
Assurance Co. of America	New York, N. Y.	5 000	80 42
Atlanta Home	Atlanta, Ga.	14,000	791 80
Atlas Assurance	London, England	803,389	2,218 55
Automobile Ins. Co.	Hartford, Conn.	89,293	444 65
Boston	Boston, Mass.	623,846	4,971 38
British America Assurance	Toronto, Canada	1,754,136	14,088 08
British Colonial	Montreal, Que.	20 500	224 50
British Dominions General	London, England	1,096 844	14,758 48
British & Federal Und.	London, England	88 875	1,303 06
British Underwriters	London, England	2,200	20 40
Buffalo German	Buffalo, N. Y.	4,500	60,21
Caledonian	Edinburgh, Scotland	230,828	2,628 88
California	San Francisco, Cal.	246,865	3,772 49
Camden Fire	Camden, N. J.	1,552,454	23,293 98
Capital	Sacramento, Cal.	3,712	54 01
Central Manufacturer's Mutual	Vanwert, Ohio	2,068	19 38
Central National Fire	Chicago, Ill.	1,911	20 61
Century	Edinburgh, Scotland	71,805	301 45
Citizens	St. Louis, Mo.	42,457	687 08
[illegible]	[illegible]	[illegible]	[illegible]
Cleveland National	Cleveland, Ohio	29,240	273 47

COPY BOUND CLOS

Cleveland National	Cleveland, Ohio	29,240	272.47
Colonial Fire Underwriters	Hartford, Conn.	11,156	26.41
Columbian National	Detroit, Mich.	61,378	671.26
Commerce	Albany, N. Y.	2,940	128.89
Commercial Union Assurance	London, England	364,076,436	3,606,999.56
Commercial Union Fire	New York, N. Y.	3,193	126.06
Commonwealth	New York, N. Y.	1,979	24.46
Concordia	Milwaukee, Wis.	1,069,231	8,641.81
Connecticut Fire	Hartford, Conn.	346,078	1,856.95
Continental	New York, N. Y.	408,815	1,793.82
County Fire	Philadelphia, Pa.	118,805	1,103.69
Delaware Underwriters	Philadelphia, Pa.	63,000	869.15
Detroit F. & M.	Detroit, Mich.	3,623,189	43,601.90
Dixie Fire	Greensboro, N. C.	35,480	676.49
Dubuque F. & M.	Dubuque, Iowa	11,141	172.26
Eastern Underwriters	Camden, N. J.	2,654	41.90
Employers' Liability Assurance Cor., Ltd	London, England	50,741	258.75
English-Amer. Und.	London, England	13,500	215.55
Equitable F. & M.	Providence, R. I.	66,483	523.06
Equitable Insurance Alliance	Providence, R. I.	14,500	124.48
Excess Insurance Co.	London, England	25,500	250.75
Farmers Fire	York, Pa.	1,222,671	10,645.02
Federal Union Fire	Chicago, Ill.	2,536	19.54
Fidelity-Phenix Fire	New York, N. Y.	275,838	1,169.23
Fidelity Underwriters	New York, N. Y.	42,150	370.97
Fire Association of Philadelphia	Philadelphia, Pa.	5,342,678	20,302.48
Fireman's Fund	San Francisco, Cal.	923,110	10,010.18
Firemen's	Newark, N. J.	1,378,146	19,364.94
Firemen's	Washington, D. C.	21,122	87.86
Firemen's Underwriters	Newark, N. J.	6,250	70.35
First National	Washington, D. C.	5,500	58.25
Franklin Fire	Philadelphia, Pa.	515,764	6,884.05
Franklin	Washington, D. C.	10,363	26.95
General Fire Assurance	Paris, France	190,530	1,843.61
Georgia Home	Columbus, Ga.	12,500	129.41
German Alliance	New York, N. Y.	1,104,992	11,266.24
German American Fire	Baltimore, Md.	8,076	64.55

CLOSE IN CENTER

3986

SCHEDULE OF REINSURANCE—Continued.

Company	Location	Amount	Premium
German American	New York, N. Y.	$1,237,261	$7,734 24
German American	Pittsburgh, Pa.	525	11 06
German Fire	Pittsburgh, Pa.	2,500	41 36
German Fire	Wheeling, W. Va.	1,051,159	7,050 16
Germania Fire	New York, N. Y.	64,108	976 37
Germania Und.	New York, N. Y.	4,000	24 05
German Underwriters	Milwaukee, Wis.	3,429	39 16
Girard F. & M.	Philadelphia, Pa.	2,624,453	16,742 29
Glens Falls	Glens Falls, N. Y.	187,243	1,119 90
Globe & Rutgers Fire	New York, N. Y.	71,391	882 01
Granite State Fire	Portsmouth, N. H.	35,565	224 13
Guardian Assurance	London, England	55,100	513 51
Guardian Ins. Co.	Salt Lake City, Utah	7,000	150 50
Hamburg Bremen Fire	Hamburg, Germany	148,604	1,190 61
Hamilton Fire	New York, N. Y.	38,000	83 21
Hanover Fire	New York, N. Y.	128,778	665 45
Hartford Fire	Hartford, Conn.	601,563	4,418 57
Hibernia Und.	New York, N. Y.	8,500	123 75
Home	New York, N. Y.	1,833,655	19,906 54
Humboldt Fire	Pittsburgh, Pa.	30,081	142 57
Imperial Assurance Co.	New York, N. Y.	5,449	67 22
Independence	Philadelphia, Pa.	6,682	44 72
Individual Fire Underwriters	St. Louis, Mo.	178	1 86
Industrial Fire	Akron, Ohio	10,000	10 39
Insurance Co. of North America	Philadelphia, Pa.	498,474	3,394 50
Insurance Co. of the State of Pennsylvania	Philadelphia, Pa.	1,198,970	9,796 93
Insurance Underwriters' Agency	New York, N. Y.	160	2 70
Jersey Fire Underwriters	Newark, N. J.	389	8 44
Keystone Underwriters	Pittsburgh, Pa.	65,135	784 63
Knickerbocker Ins. Co.	New York, N. Y.	14,750	502 46
Law, Union & Rock	London, England	66,250	923 14
Liverpool & London & Globe	Liverpool, England	645,077	6,250 78

COPY BOUND CLOTH

CLOSE IN CENTER

Liverpool & London & Globe	Liverpool, England	645,077	6,250.78	
Liverpool & London & Globe	New York, N. Y.	2,479,804	18,044.66	
Lloyds	London, England	124,279	1,124.02	
London Assurance Corporation	London, England	951,925	13,997.77	
London Guarantee & Accident	London, England	114,900	828.30	
London & Lancashire Fire	Liverpool, England	163,940	1,320.64	
London Underwriters' Agency	London, England	360	8.76	
Lumber	New York, N. Y.	1,406	17.79	
Lumbermen's	Philadelphia, Pa.	1,907,648	11,216.37	
L'Urbaine	Paris, France	20,250	223.45	
Massachusetts F. & M.	Boston, Mass.	62,666	607.91	
Mechanics Fire	Philadelphia, Pa.	5,000	20.25	
Mechanics & Traders	New Orleans, La.	66,253	299.07	
Medway Insurance Co., Ltd	Chatham, England	2,306	25.84	
Mercantile Insurance Co. of America	New York, N. Y.	33,256	241.76	
Merchants' Fire Assurance Corporation	New York, N. Y.	178,700	1,402.95	
Metropolitan Fire	Chicago, Ill.	319	3.00	
Michigan Commercial	Lansing, Mich.	1,134,921	10,633.02	
Michigan F. & M.	Detroit, Mich.	3,211,398	37,521.93	
Midland and Textile, Ltd	London, England	90	1.77	
Millers' National	Chicago, Ill.	9,457	39.32	
Milwaukee Mechanics	Milwaukee, Wis.	587,516	5,356.52	
Minneapolis F. & M.	Minneapolis, Minn.	15,000	150.00	
Minnesota Underwriters	St. Paul, Minn.	244,427	3,078.65	
Mount Royal Assurance	Montreal, Que	2,500	54.55	
National Fire	Hartford, Conn.	361,800	3,178.03	
Nationale	Paris, France	42,005	376.13	
National F. & M.	Elizabeth, N. J.	425	6.07	
National Union Fire	Pittsburgh, Pa.	112,450	716.70	
Netherlands Fire and Life	The Hague, Holland	3,771,852	24,057.68	
Newark Fire	Newark, N. J.	37,709	543.58	
Newark Underw.	Newark, N. J.	8,750	112.62	
New Brunswick Fire	New Brunswick, N. J.	36,040	214.36	
New Hampshire Fire	Manchester, N. H.	246,933	1,762.10	
New Haven Und.	New Haven, Conn.	28,281	282.58	
New Jersey Fire	Newark, N. J.	5,555	143.44	
New York Underwriters' Agency	New York, N. Y.	921,165	10,437.56	

3588

SCHEDULE OF REINSURANCE—Continued.

Company	Location	Amount	Premium
New Zealand	Auckland, N. Z.	$2,973	$53 47
Niagara-Detroit Underwriters	New York, N. Y.	243,475	4,529 22
Niagara Fire	New York, N. Y.	709,079	6,865 82
Nord Deutsche	Hamburg, Germany	14,350	108 84
North Branch Fire	Sunbury, Pa.	10,000	56 25
North British & Mercantile	London, England	755,512	5,250 71
North Empire	Winnipeg, Canada	53,500	951 24
Northern Assurance	London, England	523,270	4,651 19
Northern	New York, N. Y.	50,626	306 93
North River	New York, N. Y.	54,798	500 42
Northwestern F. & M.	Minneapolis, Minn.	24,885	351 39
Northwestern National	Milwaukee, Wis.	2,000	54 09
Norwich Union Fire Insurance Society	Norwich, England	238,917	2,594 79
Occidental Fire	Albuquerque, N. M.	5,225	33 08
Ohio Farmers	Le Roy, Ohio	111,590	1,107 36
Old Colony	Boston, Mass.	691,619	5,764 59
Orient	Hartford, Conn.	108,991	875 38
Pacific Fire	New York, N. Y.	3,672	46 78
Palatine	London, England	225,392	2,162 81
Patriotic	Dublin, Ireland	99,353	663 92
Pennsylvania Fire	Philadelphia, Pa.	912,814	8,092 25
Peoples National Fire	Wilmington, Del.	168,708	1,837 19
Petersburg Savings & Ins. Co.	Petersburg, Va.	306	1 62
Phenix	Paris, France	226,637	2,465 67
Philadelphia Underwriters	Erie, Pa.	122,542	1,349 06
Phoenix Assurance	London, England	48,512	240 99
Phoenix	Hartford, Conn.	225,391	2,194 96
Pittsburgh Underwriters	Pittsburgh, Pa.	3,500	70 97
Providence Underwriters	Providence, R. I.	14,000	157 82
Providence, Washington	Providence, R. I.	465,126	5,704 39
Prussian National	Stettin, Germany	2,332,266	13,776 97
Prussian National Underwriters	Stettin, Germany	7,379	68 59

COPY BOUND CLOS

Boston National Underwriters	Stettin, Germany	7,379	68.58
Queen Insurance Co. of America	New York, N. Y.	442,368	5,018.06
Reinsurance Bureau	New York, N. Y.	7,833,762	82,593.21
Reliance	Philadelphia, Pa.	38,231	615.61
Rhode Island	Providence, R. I.	1,918,393	16,342.39
Rochester German Underwriters' Agency	New York, N. Y.	22,226	399.74
Russia	Petrograd, Russia	49,713,692	542,668.30
Royal Exchange Assurance	London, England	105,600	664.70
Royal	Liverpool, England	1,033,107	11,171.92
Safeguard Insurance Co.	New York, N. Y.	333,493	1,691.45
St. Paul F. & M.	St. Paul, Minn.	9,665,417	144,157.22
Scottish Union and National	Edinburgh, Scotland	3,303,345	20,014.10
Security	New Haven, Conn.	2,720,452	21,358.59
Springfield F. & M.	Springfield, Mass.	1,089,411	10,259.26
Standard Fire	Hartford, Conn.	74,472	1,003.74
Standard Fire	Trenton, N. J.	10,000	103.74
Sterling	Indianapolis, Ind.	1,000	13.41
Stuyvesant	New York, N. Y.	40,250	287.09
Sun Insurance Office	London, England	208,180	2,007.32
Sun Underwriters	London, England	2,500	68.25
Svea Fire & Life	Gothenburg, Sweden	61,110	643.32
Teutonia Fire	Pittsburgh, Pa.	462,765	2,566.51
Union Assurance Society	London, England	3,766,903	23,193.10
Union Fire	Paris, France	384,376	3,685.15
United Firemen's	Philadelphia, Pa.	24,470	371.23
United States Fire	New York, N. Y.	65,249	752.27
United States Underwriters	New York, N. Y.	6,350	65.90
Virginia F. & M.	Richmond, Va.	39,282	754.70
Vulcan	Oakland, Cal.	49,149	894.70
Westchester Fire	New York, N. Y.	406,382	1,605.87
Western Assurance	Toronto, Canada	1,130,628	11,599.15
Western	Pittsburgh, Pa.	172,113	1,929.42
Williamsburgh City Fire	New York, N. Y.	3,780	53.22
Yorkshire	York, England	54,260	438.41
Total		$512,993,678	$5,064,437.75

EXHIBIT "B"

UNDERWRITING EXPERIENCE BY CLASSES.

For Missouri for Year Ending December 31, 1917.

	Classification	Protected		Unprotected	
		Net Premiums	Net Losses Paid	Net Premiums	Net Losses Paid
	MERCANTILE BUILDINGS.				
1.	Fire Proof	$712.04	$3.83	0.	0.
2.	Brick and stone	5,674.33	3,998.45	$2,444.73	$3,443.81
3.	Frame, ironclad, stucco and hollow-cement block	817.79	1,471.63	1,546.27	2,461.66
4.	Sprinklered	348.50	42.97	0.	0.
	MERCANTILE CONTENTS.				
5.	Fire Proof	224.08	672.87	0.	0.
6.	Brick and stone	17,223.01	4,497.15	6,699.16	2,796.38
7.	Frame, ironclad, stucco and hollow-cement block	1,089.81	1,201.00	4,778.91	3,567.35
8.	Sprinklered	2,798.30	218.98	0.	0.
	DWELLING BUILDINGS.				
9.	Brick and stone	9,948.75	3,063.50	422.49	1,038.07
10.	Frame, ironclad, stucco and hollow-cement block	15,209.28	7,014.90	7,722.09	5,063.43
	DWELLING CONTENTS.				
11.	Brick and stone	3,539.61	4,106.43	243.28	0.
12.	Frame, ironclad, stucco and hollow-cement block	5,028.43	4,860.98	6,895.53	4,605.89
	SPECIAL HAZARDS.				
13.	Metal workers	2,462.56	239.75	149.73	0.
14.	Wood workers	1,882.58	2,139.12	335.92	8.68
15.	Mining properties	41.23	0.	1,918.07	188.68
16.	Grain elevator buildings	91.34	0.	39.98	0.
17.	Grain elevator contents	328.03	.30	498.81	52.86
18.	Packing houses	1,659.66	30.59	44.10	0.
19.	Flour and grist mills	173.83	0.	121.16	0.
20.	Miscellaneous factories	8,632.74	1,314.39	1,465.10	755.00
21.	FARM PROPERTY	155.48	0.	1,280.92	1,735.23
22.	STEAM RAILROADS	0.	0.	7,590.67	2,195.86
23.	STREET RAILWAYS	786.18	5.53	0.	0.
	PUBLIC BUILDINGS				
24.	Churches	1,120.21	.82	509.10	534.37

24. Churches	1,130.21	.82	509.10	534.37
25. Schools	1,027.17	978.62	1,647.66	913.31
26. Hospitals	230.72	0.	78.49	0.
27. Court houses	256.26	0.	218.85	0.
28. Reform schools	48.48	0.	4.08	0.
29. Asylums	237.35	102.54	298.21	0.
30. Other public properties	38.13	0.	1.58	0.
31. MOTOR VEHICLES	6,393.17	5,861.54		
32. SPRINKLER LEAKAGE	0.	0.	0.	0.
33. HAIL	0.	0.	0.	0.
34. REGISTERED MAIL AND PACKAGE AND TRANSPORTATION	0.	0.	0.	0.
35. WINDSTORM AND TORNADO	6,661.46	4,829.46	0.	0.
36. Aggregate of all other classes not shown above	12,987.10	4,376.01	3,936.26	1,067.50
Total	$107,739.65	$50,944.82	$51,091.15	$30,428.08

OTHER EARNINGS.

(x)	Interest earned on unearned premiums on Missouri business	$461,298
(xx)	Interest earned on capital stock and surplus, pro rata for Missouri	525,089

Give method of computing these items.

EXPENSES.

1.	Commission paid agents			
	(a) Amount at 15%	$6,291.20		
	(b) Amount at 20%	10,136.44		
	(c) Amount at 25%	7,786.94		
	(d) Amount over 25% (x)	4,351.30		
	Total commissions		$28,565.88	
2.	Salaries and expenses paid Missouri agents and adjusters		8,016.78	
3.	Taxes, licenses and fees paid in Missouri		12,301.11	
4.	Rating bureau, inspection, surveys, protective departments and fire prevention bureau		2,587.19	
5.	Proportion of home and departmental expenses (not included in any of above)			
	(a) Underwriting expenses		430.98	
	(b) Investment expenses		12,251.55	
			12,682.53	
6.	Other expenses (xx).			
	TOTAL EXPENSES		$64,423.49	40.56%

EXHIBIT "B"—Continued.

INSTRUCTIONS.

This report must be made on net premiums and net losses paid. By net premiums and losses is meant premiums and losses less return premiums and reinsurance in companies authorized to do business in Missouri and no other deductions should be made. No items of "Marine and Inland" business should be included in this report, except the item of "Motor Vehicles" on line 31 of this report.

STATE OF .....
COUNTY OF ..... } ss.

..... being duly sworn on oath says that they are President and Secretary respectively, of the American Central Insurance Company; and that the foregoing is a full, true and correct statement and report

Subscribed and sworn to before me this ..... day of ....., 191....

.....
Notary Public.

EXHIBIT "C"

		Net Premiums Received	Other Earnings	Net Losses Paid	Expenses	Total Premiums and Earnings	Total Losses and Expenses	Profit or Loss (* figures indicate loss)	Per cent of Profit or Loss.
1913	U. S. companies	$6,509,458	$532,346	$4,976,727	$2,668,845	$7,041,804	$7,645,572	*$603,768	*33.9% on c.
	Foreign companies	1,616,433	102,832	1,272,791	662,721	1,719,265	1,935,512	*216,247	*10.7% on c. & s.
	Total	8,125,891	635,178	6,249,518	3,331,566	8,761,069	9,581,084	*820,015	
1914	U. S. companies	6,898,441	601,851	4,540,846	2,828,35	7,500,292	7,369,181	131,111	6.54% on c.
	Foreign companies	1,932,999	136,071	1,241,571	792,517	2,069,070	2,034,088	34,982	2.15% on c. & s.
	Total	8,831,440	737,922	5,782,417	3,620,852	9,569,362	9,403,269	166,093	
1915	U. S. companies	6,845,897	548,419	4,230,298	2,873,795	7,394,316	7,104,093	290,223	8% on c.
	Foreign companies	1,694,393	106,864	1,153,213	736,368	1,801,257	1,889,581	*88,324	2.78% on c. & s.
	Total	8,540,290	655,283	5,383,511	3,610,163	9,195,573	8,993,674	201,899	
1916	U. S. companies	7,870,632	617,440	4,349,216	3,208,890	8,488,072	7,558,006	930,066	41.2% on c.
	Foreign companies	1,872,970	117,053	1,008,167	765,847	1,990,023	1,774,014	216,009	13.9% on c. & s.
	Total	9,743,602	734,493	5,357,383	3,974,737	10,478,095	9,332,020	1,146,075	
1917	U. S. companies	9,094,787	699,059	5,503,561	3,605,670	9,793,848	9,109,231	684,617	33.6% on c.
	Foreign companies	2,504,403	153,058	1,514,922	924,588	2,657,461	2,439,510	217,951	11.4% on c. & s.
	Total	11,599,192	852,117	7,018,483	4,530,258	12,451,309	11,548,741	902,568	

Average earnings for 5 years (13-17) on capital 11.8 %—on capital and surplus 3.91%
Average earnings for 4 years (14-17) on capital 22.33%—on capital and surplus 7.55%
Average earnings for 3 years (15-17) on capital 27.6 %—on capital and surplus 9.36%
Average earnings for 2 years (16-17) on capital 37.4 %—on capital and surplus 12.6%

Tabulation showing the premiums and other earnings, and losses and expenses on business done in Missouri for the years 1913, 1914, 1915, 1916 and 1917 by all stock fire insurance companies now licensed to do business in Missouri:

1913 Total Prems.	1913 Mo. Prems. *3%	1914 Total Prems.	1914 Mo. Prems. *3.1%	1915 Total Prems.	1915 Mo. Prems. *2.86%	1916 Total Prems.	1916 Mo. Prems. *2.82%	1917 Total Prems.	1917 Mo. Prems. *2.57%
268,645,117	8,125,891	283,445,685	8,831,440	298,312,179	8,450,290	345,599,824	9,743,602	454,222,413	11,599,192
Total Capital	**Mo. Capital *3%**	**Total Capital**	**Mo. Capital *3.1%**	**Total Capital**	**Mo. Capital *2.86%**	**Total Capital**	**Mo. Capital *2.82%**	**Total Capital**	**Mo. Capital *2.57%**
80,666,000	2,419,980	81,934,200	2,539,960	87,807,700	2,511,300	98,620,830	2,781,107	104,571,280	2,687,381
Total C. & S.	**Mo. C. & S. *3%**	**Total C. & S.**	**Mo. C. & S. *3.1%**	**Total C. & S.**	**Mo. C. & S. *2.86%**	**Total C. & S.**	**Mo. C. & S. *2.82%**	**Total C. & S.**	**Mo. C. & S. *2.57%**
255,530,237	7,665,907	248,251,028	7,695,781	253,898,393	7,261,494	291,268,514	8,213,772	308,129,994	7,918,940

EXHIBIT "D"

U. S. COMPANIES

	1913	1914	1915	1916	1917	Average	
Capital	$72,126,000	$73,279,200	$77,025,200	$87,322,330	$93,272,780	$80,605,102	
Surplus	145,394,864	134,853,685	133,978,346	156,104,022	162,743,402	146,614,664	
Total	217,510,864	208,131,885	211,003,546	243,427,352	256,016,182	227,219,766	Total
Dividends	15,846,220	12,983,039	13,726,321	21,330,426	17,287,654	16,234,732	$81,173,660
Increase or decrease in surplus	*10,542,179	*874,339	22,125,676	6,639,380	*8,436,572	1,782,393	8,911,966
Total earnings	5,304,041	12,108,700	35,851,997	27,969,806	8,851,082	18,017,125	90,085,626
*Figures show decrease.							
Per cental on capital	7.3 %	17.7%	46.5%	32 %	9.5%	22.6%	
Per cent on capital and surplus	2.44%	6.2%	17 %	11.1%	3.45%	8.4%	

FOREIGN COMPANIES.

Deposit Capital	$8,540,000	$9,655,000	$10,782,500	$11,298,500	$11,298,500	$10,314,900	
Surplus	29,469,373	31,464,143	32,113,347	36,543,662	40,815,312	34,081,170	
Total	38,009,373	41,119,143	42,895,847	47,842,162	52,113,812	44,396,070	
							Total
Net remittances to home office	2,994,459	1,253,307	3,319,433	2,781,110	4,292,461	2,928,154	$14,640,770
Increase in surplus	1,994,770	649,202	4,430,315	4,271,650	3,979,264	2,888,641	14,443,203
							29,083,973

EXHIBIT "D"—Continued.

ALL COMPANIES.

Capital U. S. companies	$72,126,000	$73,279,200	$77,025,200	$87,322,330	$93,272,780	$80,605,102	
Capital foreign companies	8,540,000	9,655,000	10,782,500	11,298,500	11,298,500	10,314,900	
Total	80,666,000	81,934,200	87,807,700	98,620,830	104,571,280	90,920,002	
Surplus U. S. companies	145,394,864	134,852,685	133,978,346	156,104,022	162,743,402	146,614,664	
Surplus foreign companies	29,469,373	31,464,143	32,113,347	36,543,662	40,815,312	34,081,170	
Total	174,864,237	166,316,828	166,091,693	192,647,684	203,558,714	180,695,834	
Total capital	80,660,000	81,934,200	87,807,700	98,620,830	104,571,280	90,920,002	
Total surplus	174,864,237	166,316,828	166,091,693	192,647,684	203,558,714	180,695,834	
Total capital and surplus	255,530,237	248,251,028	253,898,393	291,268,514	308,129,994	271,615,836	
Earnings U. S. companies	5,304,041	12,108,700	35,851,997	27,969,806	8,436,572	18,017,125	$90,085,626
Earnings foreign companies	4,989,249	1,902,511	7,749,748	7,052,760	7,389,725	5,816,795	29,083,973
Total earnings	10,293,290	14,001,211	43,601,745	35,022,566	15,826,297	23,833,920	119,169,599
Per cent on capital	12.7%	17. %	49.6%	35.5%	15.1%	25.98%	
Per cent on capital and surplus	4 %	5.6%	17.1%	12%	5.1%	8.77%	

Tabulation showing earnings on business in the United States for the years 1913, 1914, 1915, 1916 and 1917 of all stock fire companies now licensed to do business in Missouri.

EXHIBIT "E"

Tabulation showing the premiums and earnings from interest on unearned premiums (omitting interest earned on capital and surplus for Missouri, and losses and expenses, in Missouri, for years 1915, 1916 and 1917, for all stock fire insurance companies now licensed to do business in Missouri.

	Missouri Capital	Missouri Capital and Surplus	Missouri Premiums	Interest on Unearned Premiums	Total of Premiums and Interest on Unearned Premiums	Total Losses and Expenses	Net Profit or Loss	Per cent of Profit or Loss on Capital and on Capital and Surplus
						Italic figures indicate a loss		- 7.8%
1915	$2,511,300	$7,261,494	$8,540,290	$275,773	$8,815,863	$8,993,674	*$177,811*	*2.44% on c. & s.*
1916	2,781,107	8,213,772	9,743,602	314,913	10,058,515	9,332,020	726,495	26.12% on c. 8.84% on c. & s.
1917	2,687,381	7,918,940	11,599,192	411,087	12,010,279	11,548,741	461,538	17.17% on c. 5.82% on c. & s.
Average	$2,659,929	$7,798,069	$9,961,027	$333,858	$10,294,885	$9,958,145	$336,740	12.65% on c. 4.32% on c. & s.

$2,659,929

3998

63

EXHIBIT "F"

Tabulation showing premium income, and losses and expenses (omitting all earnings except premium income) in Missouri for years 1915, 1916 and 1917, for all stock fire insurance companies now licensed to do business in Missouri.

	Missouri Capital	Missouri Capital and Surplus	Missouri Premiums	Total Losses and Expenses	Net Profit or Loss	Percent of Profit or Loss on Capital and on Capital and Surplus
1915	$2,511,300	$7,261,494	$8,540,290	$8,993,674	*453,384	*18.05% on c. * 6.24% on c. & s.
1916	2,781,107	8,213,772	9,743,602	9,332,020	411,582	14.09% on c. 5.01% on c. & s.
1917	2,687,381	7,918,940	11,599,192	11,548,741	50,451	1.88% on c. .63% on c. & s.
Average	$2,659,929	$7,798,069	$9,961,027	$9,958,145	$2,882	.1% on c. .037% on c. & s.

*Figures indicate loss.

EXHIBIT "G"

RECAPITULATION OF UNDERWRITING EXPERIENCE BY CLASSES

for Missouri for Year Ending December 31, 1915.

Net Losses Classification	Protected			Unprotected		
	Net Premiums	Net Losses Paid	Per Cent.	Net Premiums	Net Losses Paid	Per Cent.
MERCANTILE BUILDINGS.						
Fireproof	$65,838.00	$9,974.00	15	$706.00	$381.00	53
Brick and stone	660,212.00	334,508.00	50	102,143.00	91,404.00	89
Frame, ironclad, stucco and hollow-cement block	86,434.00	64,294.00	74	88,109.00	86,960.00	98
Sprinklered	72,632.00	5,858.00	8	215.00		
MERCANTILE CONTENTS.						
Fireproof	81,263.00	17,018.00	20	364.00		
Brick and stone	1,084,241.00	611,236.00	56	155,904.00	130,282.00	83
Frame, ironclad, stucco and hollow-cement block	132,514.00	107,175.00	80	154,011.00	141,209.00	91
Sprinklered	199,143.00	30,233.00	15	226.00	4,269.00	1888
DWELLING BUILDINGS.						
Brick and stone	389,233.00	285,482.00	73	20,287.00	12,418.00	61
Frame, ironclad, stucco and hollow-cement block	712,425.00	697,230.00	97	253,824.00	294,906.00	116
DWELLING CONTENTS.						
Brick and stone	197,912.00	211,119.00	106	5,794.00	11,873.00	204
Frame, ironclad, stucco and hollow-cement block	266,751.00	304,735.00	114	82,089.00	121,256.00	147

EXHIBIT "O"—Continued.

RECAPITULATION OF UNDERWRITING EXPERIENCE BY CLASSES

for Missouri for Year Ending December 31, 1915.

Classification	Protected			Unprotected		
Net Losses	Net Premiums	Net Losses Paid	Per Cent.	Net Premiums	Net Losses Paid	Per Cent.
SPECIAL HAZARDS.						
Metal workers	$160,527.00	$81,221.00	50	$5,271.00	$2,576.00	48
Wood workers	135,118.00	134,873.00	99	13,167.00	6,436.00	48
Mining properties	12,040.00	5,179.00	43	88,144.00	11,949.00	13
Grain elevator buildings	10,086.00	494.00	4	5,265.00	1,875.00	35
Grain elevator contents	41,607.00	3,780.00	9	13,068.00	5,244.00	40
Packing houses	54,347.00	13,100.00	24	2,228.00	1,558.00	69
Flour and grist mills	12,424.00	10,836.00	87	6,623.00	1,287.00	19
Miscellaneous factories	865,651.00	487,822.00	56	127,128.00	60,318.00	47
PUBLIC BUILDINGS.						
Churches	54,868.00	26,344.00	47	15,364.00	11,833.00	
Schools	71,028.00	123,025.00	173	36,882.00	27,455.00	77
Hospitals	14,603.00	4,457.00	30	1,104.00		74
Court houses	15,541.00	12,139.00	78	4,252.00	12,115.00	284
Reform schools	4,044.00	148.00	3	957.00	480.00	50
Asylums	10,500.00	887.00	8	3,689.00	535.00	14
Other public properties	78,157.00	17,671.00	22	13,536.00	6,769.00	50
Motor vehicles	208,300.00	111,163.00	53	45,758.00	37,730.00	82
Sprinkler leakage	17,416.00	3,771.00	21	9,505.00	7,595.00	79
Hail	362.00			7,910.00	2,446.00	30
Registered mail and package and transportation	7,187.00	3,758.00	52	7,796.00	2,231.00	28
Windstorm and tornado	374,622.00	77,528.00	20	440,918.00	100,476.00	22
Aggregate of all other classes not shown above	203,075.00	121,312.00	59	18,613.00	18,155.00	97
Totals	$6,435,629.00	$3,977,726.00	61	$2,463,938.00	$1,721,526.00	69

EXPENSES.

Commission paid agents:		
Amount at 15 per cent	$274,904.00	
Amount at 20 per cent	376,572.00	
Amount at 25 per cent	592,554.00	
Amount over 25 per cent	293,504.00	
Other commissions	444,727.00	
Total commissions		$1,982,261.00
Salaries and expenses paid Missouri agents and adjusters		460,653.00
Taxes, licenses and fees paid in Missouri		330,600.00
Rating bureau, inspection, surveys, protective departments and fire prevention bureau expenses		172,225.00
Proportion of home and departmental expense (not included in any of above):		
Underwriting expenses	$756,202.00	
Investment expenses	30,255.00	786,457.00
Other expenses		39,058.00
Total expenses		$3,771,254.00

OTHER EARNINGS.

Interest earned on unearned premiums on Missouri business	$289,676.00
Interest earned on capital stock and surplus, pro rata for Missouri	400,802.00

EXHIBIT "H"

Underwriting Experience by Classes for Missouri for Year Ending December 31, 1916.

Classification	Protected			Unprotected		
	Net Premiums	Net Losses Paid	Per Cent.	Net Premiums	Net Losses Paid	Per Cent.
MERCANTILE BUILDINGS.						
Fireproof	$ 60,035 00	$ 12,688 00	21	$ 81 00	$ 4,035 00	4981
Brick and stone	643,577 0	345,801 00	54	97,264 00	97,264 00	51
Frame, ironclad, stucco and hollow-cement block	96,685 00	58,607 00	11	85,974 00	52,884 00	61
Sprinklered	77,041 00	9,330 00	11	453 00	725 00	160
MERCANTILE CONTENTS.						
Fireproof	97,255 00	17,072 00	17	632 00		
Brick and stone	1,148,930 00	688,077 00	60	152,572 00	97,479 00	63
Frame, ironclad, stucco and hollow-cement block	119,010 00	74,787 00	63	144,299 00	109,388 00	75
Sprinklered	243,488 00	45,335 00	18	90 00	1,012 00	1124
DWELLING BUILDINGS.						
Brick and stone	409,907 00	246,706 00	60	12,708 00	14,272 00	112
Frame, ironclad, stucco and hollow-cement block	695,473 00	618,676 00	89	244,795 00	272,501 00	111
DWELLING CONTENTS.						
Brick and stone	196,229 00	118,924 00	61	6,179 00	6,870 00	111
Frame, ironclad, stucco and hollow-cement block	268,110 00	287,334 00	107	82,782 00	78,335 00	94
SPECIAL HAZARDS.						
Metal workers	183,168 00	115,182 00	63	5,947 00	528 00	9
Wood workers	142,148 00	45,898 00	32	13,399 00	3,153 00	24
Mining properties	11,038 00	4,258 00	38	141,905 00	44,833 00	32
Grain elevator buildings	12,567 00	1,048 00	8	5,561 00	7,303 00	131

Grain elevator contents	52,949.00	5,825.00	11	19,530.00	4,188.00	21
Packing houses	71,402.00	8,929.00	12	2,492.00	44.00	2
Flour and grist mills	17,970.00	8,540.00	48	4,411.00	1,173.00	27
Miscellaneous factories	757,498.00	318,823.00	42	77,331.00	31,021.00	41
Farm property	1,026.00	855.00	83	670,031.00	512,959.00	76
Steam railroads	56,629.00	15,014.00	27	92,413.00	28,365.00	31
Street railways	73,152.00	3,719.00	5	3,527.00	173.00	5
PUBLIC BUILDINGS.						
Churches	64,998.00	50,798.00	78	19,545.00	9,301.00	47
Schools	72,957.00	138,720.00	190	40,286.00	23,047.00	57
Hospitals	18,075.00	509.00	3	1,381.00	154.00	11
Courthouses	17,886.00	740.00	4	4,291.00	61.00	14
Reform schools	7,021.00	35,096.00	499	92.00	7.00	7
Asylums	13,467.00	1,281.00	9	9,471.00	363.00	4
Other public properties	51,377.00	19,862.00	38	13,724.00	2,515.00	18
Motor vehicles	335,244.00	153,969.00	46	127,550.00	80,257.00	63
Sprinkler leakage	21,383.00	5,825.00	27	23,685.00	5,220.00	22
Hail	1,530.00	1,697.00	111	4,610.00	297.00	6
Registered mail and package and transportation	6,971.00	2,651.00	38	8,008.00	1,995.00	25
Windstorm and tornado	381,535.00	85,131.00	22	528,402.00	161,533.00	31
Aggregate of all other classes not shown above	682,522.00	296,194.00	43	179,678.00	77,468.00	43
Totals	$7,109,265.00	$3,844,081.00	54	$2,825,098.00	$1,683,444.00	60

EXHIBIT "H"—Continued.

OTHER EARNINGS.

Interest earned on unearned premiums on Missouri business		$320,290.00
Interest earned on capital stock and surplus, pro rata for Missouri		425,826.00
Total		$746,116.00

EXPENSES.

Commissions paid agents		2,183,951.00
Salaries and expenses paid Missouri agents and adjusters		485,467.00
Taxes, licenses and fees paid in Missouri		329,474.00
Rating bureau, inspection, surveys, protective departments and fire prevention bureau expense		178,004.00
Proportion of home and departmental expense (not included in any of above):		
Underwriting expenses	$804,410.00	
Investment expenses	45,125.00	
		849,535.00
Other expenses		26,736.00
Total expenses		$4,053,167.00

EXHIBIT "I."

UNDERWRITING EXPERIENCE BY CLASSES

for Missouri for Year Ending

December 31, 1917.

	Classification	Protected. Net Premiums	Protected. Net Losses Paid	Protected. Per Cent.	Unprotected. Net Premiums	Unprotected. Net losses paid	Unprotected. Per Cent.
	MERCANTILE BUILDINGS.						
1.	Fireproof	$78,843	$13,189	17	$877	$481	55
2.	Brick and stone	675,097	451,455	67	89,934	77,705	86
3.	Frame, ironclad, stucco and hollow-cement block	98,670	90,111	91	82,236	48,946	59
4.	Sprinklered	73,513	12,076	16	340		
	MERCANTILE CONTENTS.						
5.	Fireproof	96,879	25,811	27	484		
6.	Brick and stone	1,318,588	788,456	60	162,452	122,851	71
7.	Frame, ironclad, stucco and hollow-cement block	136,044	96,063	70	150,937	108,556	72
8.	Sprinklered	350,891	60,753	17	3,068		
	DWELLING BUILDINGS.						
9.	Brick and stone	466,072	274,184	59	16,307	7,434	46
10.	Frame, ironclad, stucco and hollow-cement block	822,912	828,576	101	299,668	308,810	103
	DWELLING CONTENTS.						
11.	Brick and stone	227,894	144,405	62	8,768	1,635	19
12.	Frame, ironclad, stucco and hollow-cement block	305,363	312,997	103	102,394	112,045	109

3606

EXHIBIT "I"—Continued.

UNDERWRITING EXPERIENCE BY CLASSES
for Missouri for Year Ending
December 31, 1917.

Classification	Protected. Net Premiums	Protected. Net Losses Paid	Protected. Per Cent.	Unprotected. Net Premiums	Unprotected. Net Losses Paid	Unprotected. Per Cent.
SPECIAL HAZARDS.						
13. Metal workers	$228,852	$64,676	28	$5,058	$17	.3
14. Wood workers	166,880	136,737	83	10,417	6,903	66
15. Mining properties	19,810	8,765	44	127,426	61,541	48
16. Grain elevator buildings	12,156	1,018	8	5,567	1,216	22
17. Grain elevator contents	42,674	4,421	10	21,281	874	4
18. Packing houses	112,677	19,680	17	2,767	800	29
19. Flour and grist mills	23,062	15,723	68	8,982	3,251	36
20. Miscellaneous factories	889,210	566,550	63	108,825	58,122	54
21. Farm property	1,484	3,106	200	794,480	507,785	64
22. Steam railroads	68,106	26,119	38	124,489	47,543	38
23. Street railways	56,967	7,714	14	7,234	104	1.4
PUBLIC BUILDINGS.						
24. Churches	69,041	27,506	40	23,161	3,112	13
25. Schools	75,656	43,148	57	42,223	48,457	114
26. Hospitals	23,289	5,815	25	2,008	380	19
27. Courthouses	20,779	2,512	12	4,025	90	2
28. Reform schools	4,494	217	5	840	6	.7
29. Asylums	10,326	7,107	68	4,596	23	.5
30. Other public properties	59,564	21,518	36	12,823	161	1.2
31. Motor vehicles	503,422	371,940	74	203,736	130,546	61
32. Sprinkler leakage	34,903	16,974	49	29,033	11,213	30
33. Hail	2,084	3	.1	10,538	2,757	26
34. Registered mail and package and transportation	10,019	5,101	51	7,610	2,472	32
35. Windstorm and tornado	402,907	98,878	24	650,448	185,631	29
36. Aggregate of all other classes not shown above	941,775	566,229	60	129,013	78,462	61
Totals	$3,430,284	$2,130,416	61	$2,202,185	$1,028,920	60

COPY BOUND CLOTH

CLOSE IN CENTER

Totals	$6,430,000	$6,128,410	61	$2,222,150	$1,650,000	60

OTHER EARNINGS.

Interest earned on unearned premiums on Missouri business	$414,853
Interest earned on capital stock and surplus, pro rata for Missouri	460,612
Total	$875,465

EXPENSES.

Total commissions paid agents		$2,574,340
Salaries and expenses paid Missouri agents and adjusters		473,476
Taxes, licenses and fees paid in Missouri		310,570
Rating bureau, inspection, surveys, protective departments and fire prevention bureau expenses		178,672
Proportion of home and departmental expenses (not included in any of above):		
Underwriting expenses	$890,008	
Investment expenses	29,665	919,673
Other expenses		102,756
Total expenses		$4,559,488

3608

EXHIBIT NO. 12.

AETNA INSURANCE COMPANY TELEGRAM.

Chicago, Ill., September 17, 1918.

Missouri Inspection Bureau,
1330 Pierce Building,
St. Louis, Missouri.

Gentlemen:—

Complying with your request of the 11th, we wish to say that the figures furnished the Missouri Insurance Department at the close of the year 1917 under the following captions:

"Interest earned on unearned premiums on Missouri business.
Interest earned on capital, stock and surplus, pro rata for Missouri.
Proportion of home and departmental expenses (not included in any of above), subdivided into underwriting expenses and investment expenses,"

were arrived at by prorating the grand total of the outgo of the various items enumerated on the pro rata basis that the Missouri premium receipts for the year bore to thegr and total premium receipts of the company for the year,

Yours very truly,
R. B. Ives,
Assistant Secretary.

EXHIBIT AETNA INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$21,227.90	$20,610.05	$19,197.78	$20,922.26	$19,646.24
Interest on deposits	248.21	672.55	715.18	618.38	865.70
Interest on bills receivable	5.19	.....	28.58	21.87	31.78
Interest from all other sources	49.11	25.54	8.07	10.14	.30
Gross rents from company property	607.00	609.70	556.31	556.60	506.00
Premiums on perpetual risks	75.94	131.54	144.03	73.92	12.26
Conscience fund	.15	11.76	15.86	28.82	4.10
Miscellaneous	233.02	.....	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	8,622.10	9,298.54	8,826.93	9,200.71	8,870.40
Salaries and fees home and branch office	10,194.79	10,902.07	10,760.07	11,918.19	12,302.70
Printing and stationery	2,162.09	2,413.75	2,120.54	2,917.60	2,762.70
Postage and exchange	1,506.46	1,513.78	1,527.46	1,612.07	1,498.16
Inspection and surveys	1,496.40	1,262.57	1,550.98	1,422.67	1,562.52
Federal taxes	324.26	306.50	1,702.36	1,624.48	1,274.24
State and other taxes	9,140.71	9,650.47	9,294.85	12,413.79	12,030.34
Fire department taxes	1,334.90	1,194.48	1,316.99	1,541.39	1,738.18
Expense of adjustment of losses	1,320.89	1,607.71	1,861.09	1,915.94	1,924.22
Rents	1,778.23	1,400.98	1,288.06	1,215.59	1,137.46
Advertising	498.36	442.01	401.32	450.74	452.30
Legal expenses	403.51	427.78	362.67	402.34	373.26
Furniture and fixtures	293.64	387.43	304.92	304.94	500.92
Maps	410.78	378.31	349.93	346.85	243.40
Underwriters boards	2,529.36	2,947.42	2,737.02	3,061.34	2,924.68
Allowance to local agents, miscellaneous expenses	.....	.....	.....	.....	.....
Repairs and expenses (not taxes) on real estate	150.02	16.06	11.59	74.62	207.56

EXHIBIT NO. 13.

AMERICAN CENTRAL INSURANCE COMPANY.

IN SAINT LOUIS

Saint Louis, September 12, 1918.

Messrs. Waterworth & Hess, Managers,
Missouri Inspection Bureau,
Pierce Building,
Saint Louis.

Re: *Underwriting Experience by Classes*

Gentlemen:—

In reply to your valued favor 11th instant, we would advise that in filing our statement of the underwriting experience by classes with the Missouri Insurance Department for the years 1915, 1916 and 1917 the following items were pro rated in the proportion that Missouri premiums bore to total premiums.

Item No. 1—Interest earned on unearned premiums on Missouri business.

Item No. 2—Interest earned on capital stock and surplus, pro rata for Missouri.

Item No. 3—Proportion of home and departmental expenses (not included in any of above), subdivided into underwriting expenses and investment expenses.

Yours very truly,

O. G. Tolba,
General Auditor.

EXHIBIT AMERICAN CENTRAL INSURANCE CO.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$19,479.50	$17,366.21	$21,289.10	$18,044.14	$20,297.05
Interest on deposits	266.29	264.64	635.92	1,061.54	1,215.83
Interest on bills receivable	27.14	.....	.....	469.52	2,551.16
Interest from all other sources	1,890.93	1,314.00	1,604.75	567.86	.....
Gross rents from company property	.....	.....	.....	.....	.....
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	1.85	.....	.....	.....	142.45
Disbursements:					
Salaries and expenses special and general agents	21,720.40	20,796.10	17,065.45	16,684.01	17,586.61
Salaries and fees home and branch office	11,104.48	10,598.65	8,478.86	8,025.47	7,944.86
Printing and stationery	4,796.22	4,315.88	2,848.80	2,693.33	2,852.70
Postage and exchange	3,140.51	2,466.90	1,907.36	1,764.58	1,921.15
Inspections and surveys	3,106.17	3,128.88	2,472.95	2,222.88	*5,238.31
Federal taxes	.....	1,386.53	2,149.91	1,462.82	378.53
State and other taxes	11,635.70	8,974.40	7,753.84	7,367.32	10,188.95
Fire department and taxes	952.99	839.18	580.74	431.11	600.91
Expense of adjustment of losses	3,733.25	3,245.65	3,542.28	3,396.36	3,480.09
Rents	1,965.60	1,731.85	1,531.50	1,538.06	1,745.44
Advertising	383.03	468.32	347.64	444.18	314.16
Legal expenses	532.03	229.09	626.75	94.38	16.63
Furniture and fixtures	574.76	263.17	633.14	486.68	232.54
Maps	1,185.48	959.78	722.66	675.58	517.56
Underwriters boards	3,408.65	2,550.74	2,014.11	2,408.24	*.....
Allowance to local agents, miscellaneous expense	1,090.00	1,124.78	.....	765.73	733.04
Repairs and expenses (not taxes) on real estate	.....	.....	.....	.....	.....

*Includes underwriters boards.

EXHIBIT NO. 14.

EXHIBIT THE AMERICAN INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$14,152 97	$15,527 45	$13,930 50	$13,167 11	$12,391 23
Interest on deposits	137 38	158 15	190 58	248 30	263 44
Interest on bills receivable	124 31	16 95	10 53	4,006 60	3,418 38
Interest from all other sources	4,171 25	4,404 35	4,417 61	*	*
Gross rents from company property	1,229 43	1,376 85	1,238 54	1,117 99	1,083 21
Premiums on perpetual risks					
Conscience fund					
Miscellaneous					
Disbursements:					
Salaries and expenses, special and general agents	6,581 60	6,639 30	6,289 03	6,352 91	4,913 60
Salaries and fees home and branch office	9,334 53	10,618 80	9,854 44	9,219 96	9,456 31
Printing and stationery	2,319 73	2,220 40	1,890 92	1,944 06	1,894 20
Postage and exchange	1,594 94	1,551 45	1,271 62	1,290 68	1,195 91
Inspections and surveys	1,391 39	1,808 45	1,760 79	1,731 47	3,174 26
Federal taxes	291 59	307 15	1,535 89	1,622 57	615 67
State and other taxes	5,537 73	6,402 90	5,381 72	4,750 79	4,286 55
Fire department and taxes	1,698 02	1,458 90	1,469 70	1,260 75	1,108 45
Expense of adjustment of losses	3,383 53	3,470 75	3,461 50	3,122 35	2,776 41
Rents	1,084 90	1,099 80	1,059 93	1,021 06	1,480 71
Advertising	113 65	124 10	55 11	74 46	191 73
Legal expenses	61 48	8 80	48 71	1 34	74 27
Furniture and fixtures	695 08	246 40	189 89	113 41	145 70
Maps	488 80	419 40	371 08	369 90	334 62
Underwriters boards	1,080 81	1,343 15	1,374 30	1,278 63	†
Allowance to local agents, miscellaneous expenses			22 26		
Repairs and expenses (not taxes) on real estate	61 33	63 30		34 69	500 25

*Included in interest on bills receivable.
†Included in inspections and surveys.

COPY BOUND CLOSE

EXHIBIT NO. 15.

BOSTON INSURANCE COMPANY OF BOSTON.

Boston, September 17, 1918.

Messrs. Waterworth & Hess,
Pierce Building,
Saint Louis, Missouri.

Ten per cent Surcharge—Missouri.

Gentlemen:

At the request of our Western Department Managers, Messrs. A. D. Baker & Company, Lansing, Michigan, we would state that the combined salaries of the President, Vice-President and Secretary of our Company amount to $42,500, which is equivalent to $410.55 as Missouri's proportion, figured by apportioning the net premiums in Missouri over the total premiums of the Company.

Yours truly,

President.

OSE IN CENTER

EXHIBIT BOSTON INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$2,443.93	$3,486.87	$2,814.74	$3,534.64	$3,367.18
Interest on deposits	87.58	120.67	111.45	192.11	213.98
Interest on bills receivable	24.12	2.32	14.10	311.90	268.75
Interest from all other sources	297.28	408.96	278.68	16.02	32.23
Gross rents from company property	23.20	344.25	477.48	567.62	458.98
Premiums on perpetual risks					
Conscience fund		.45	.17	.64	.22
Miscellaneous	10.80				
Disbursements:					
Salaries and expenses, special and general agents	540.13	1,391.36	982.35	796.99	1,076.23
Salaries and fees, home and branch office	2,436.70	3,949.27	3,389.01	4,130.11	4,395.73
Printing and stationery	270.46	404.21		341.30	469.94
Postage and exchange	194.96	324.70	210.97	243.63	261.98
Inspections and surveys	122.99	151.49	143.14	206.46	701.38
Federal taxes	23.22	97.31	260.20	353.49	417.09
State and other taxes	747.56	1,495.46	965.86	1,729.20	1,387.91
Fire department and taxes	215.95	320.71	215.14	298.80	253.07
Expense of adjustment of losses	412.68	607.16	479.32	610.85	582.83
Rents	256.66	513.25	545.17	628.08	616.99
Advertising	65.39	100.98	288.58	125.54	119.26
Legal expenses	7.54	16.87	26.50	89.23	40.49
Furniture and fixtures	46.90	223.01	28.48	39.18	160.58
Maps	69.05	92.32	136.68	75.34	76.88
Underwriters boards	299.94	504.68	424.00	548.29	*
Allowance to local agents, miscellaneous expenses	277.20	275.89	416.50	508.69	315.42
Repairs and expenses (not taxes) on real estate	39.78	131.81	920.30	138.05	103.30

*Included in inspections and surveys.

COPY BOUND CLO

EXHIBIT NO. 16.

TELEGRAM.

PHOENIX INSURANCE COMPANY.

Hartford, Conn., Sept. 17, 1918.

Waterworth and Hess,
1340-1341 Pierce Bldg.,
St. Louis Mo.

The figures we furnished under the three captions mentioned your circular letter September eleventh for the years nineteen fifteen sixteen seventeen were pro rated in the proportion that Missouri premiums bear to total premiums this answer is for Phoenix Ins. Co. as well as the Connecticut and Equitable.

GEORGE M. LOVEJOY,
Vice President.

LOSE IN CENTER

EXHIBIT CONNECTICUT INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$11,147 46	$8,243 52	$11,433 16	$12,397 98	$11,428 27
Interest on deposits	196 74	229 10	362 31	601 59	889 60
Interest on bills receivable	70 64		85 01	68 03	58 51
Interest from all other sources	2,409 92	2,250 62	2,360 67	2,042 81	1,451 77
Gross rents from company property	403 21	5 81	64		
Premiums on perpetual risks					
Conscience fund					
Miscellaneous					
Disbursements:					
Salaries and expenses, special and general agents	7,718 06	7,982 74	8,114 25	8,074 27	7,554 6
Salaries and fees, home and branch office	10,741 33	10,486 27	11,336 33	11,453 47	12,701 36
Printing and stationery	1,639 22	3,161 62	2,548 24	3,010 37	3,726 2
Postage and exchange	1,061 35	900 72	889 55	779 29	793 7
Inspections and surveys	1,554 24	2,034 10	583 90	463 76	438 9
Federal taxes	167 04	54 53	1,262 46	1,104 84	368 1
State and other taxes	6,048 19	6,475 25	6,634 17	7,466 47	6,705 6
Fire department and taxes	1,256 97	1,093 89	1,386 70	1,494 18	1,343 6
Expense of adjustment of losses	1,659 99	1,598 59	2,044 21	2,385 73	2,302 51
Rents	1,467 29	1,525 68	1,784 40	1,417 18	1,328 2
Advertising	810 37	426 67	446 26	400 78	175 1
Legal expenses	878 01	363 02	435 98	446 60	242 1
Furniture and fixtures	202 90	1,051 01	121 05	134 69	576 6
Maps	608 65	294 00	398 61	294 30	
Underwriters boards	1,321 64	940 75	2,787 16	2,914 83	2,927 3
Allowance to local agents, miscellaneous expenses	690 71	776 50	861 57	971 35	905 8
Repairs and expenses (not taxes) on real estate	12 50	4 13			

COPY BOUND C

EXHIBIT NO. 17.

THE CONTINENTAL INSURANCE COMPANY OF NEW YORK.

Chicago, Ill., September 14, 1918.

Messrs. Waterworth & Hess,
1330 Pierce Building,
St. Louis, Mo.

Gentlemen:

In reply to your letter of September 11th with regard to your filing with the Commissioner, it has been our custom to pro rate the items of income and outgo as itemized by you in proportion as the Missouri premiums bore to total premiums.

Yours very truly,

J. R. WILBUR,
Secretary.

JRW-EW.

CLOSE IN CENTER

EXHIBIT CONTINENTAL INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$22,594 07	$38,900 62	$42,293 81	$55,214 76	$60,491 02
Interest on deposits	1,023 18	2,582 38	2,866 34	2,487 18	2,948 38
Interest on bills receivable	29 96	.....	.....	7 25	263 61
Interest from all other sources	242 22	83 18	175 37	159 24	149 26
Gross rents from company property	1,381 47	2,690 53	2,972 78	3,515 54	3,718 00
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	290 33	.....	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents	5,624 54	9,927 51	10,172 80	11,442 88	11,271 10
Salaries and fees, home and branch office	9,940 02	16,909 63	18,043 50	20,678 97	22,320 38
Printing and stationery	1,033 56	1,816 18	2,145 52	2,893 25	3,076 37
Postage and exchange	1,508 14	2,376 51	2,391 61	2,886 31	3,012 37
Inspections and surveys	65 87	642 54	607 66	1,079 44	1,416 03
Federal taxes	198 57	710 88	2,567 55	2,298 23	2,448 38
State and other taxes	5,240 42	9,080 35	10,098 80	10,476 10	10,405 27
Fire department and taxes	712 51	1,028 27	933 17	795 33	1,091 17
Expenses of adjustment of losses	2,840 73	4,813 85	4,980 74	5,477 90	5,265 17
Rents	1,664 67	2,750 69	2,648 56	3,042 12	3,192 27
Advertising	781 86	1,263 44	1,307 88	1,974 53	3,189 19
Legal expenses	36 15	26 94	100 17	51 52	41 84
Furniture and fixtures	367 93	485 29	537 78	973 13	1,771 79
Maps	530 95	873 98	822 97	720 84	661 77
Underwriters boards	2,076 23	3,310 83	3,881 32	4,490 00	4,971 96
Allowance to local agents, miscellaneous expenses	31 55	46 47	.....	63 26	92 15
Repairs and expenses (not taxes) on real estate	1,625 81	1,153 07	1,534 40	.....	2,037 10

COPY BOUND CLOSE

EXHIBIT NO. 18.

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK.

Chicago, September 14, 1918.

Messrs. Waterworth & Hess, Managers,
Pierce Bldg.,
St. Louis, Mo.

Gentlemen:

Acknowledging your favor of the 11th inst., we beg to advise that in our report to the Missouri Insurance Department entitled "Underwriting Experience by Classes" for the years 1915-1916 and 1917, interest earned on unearned premiums, interest earned on capital stock and surplus and the proportion of home and departmental expenses indicated were prorated in the proportion that Missouri premiums bear to total premiums written by the company.

Yours very truly,
INGRAM & LEECH,
Managers.

WLL-1.

OSE IN CENTER

EXHIBIT GREAT AMERICAN (GERMAN AMERICAN) INSURANCE COMPANY

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$18,787.15	$30,514.25	$23,843.57	$25,224.29	$34,199.37
Interest on deposits	186.37	607.32	473.68	621.35	556.32
Interest on bills receivable	52.60	324.58	.....	192.94	238.79
Interest from all other sources	113.21	146.30	1,894.57	330.25	491.21
Gross rents from company property	5,043.42	7,743.53	6,329.22	6,251.33	7,715.46
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	72.24	415.22	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents	12,719.04	20,923.24	17,621.53	17,725.47	22,566.53
Salaries and fees, home and branch office	8,101.11	12,527.50	10,737.13	11,782.47	16,279.21
Printing and stationery	1,732.21	2,408.44	2,160.64	3,609.37	3,306.13
Postage and exchange	1,691.64	2,528.21	2,072.69	2,140.14	2,935.39
Inspections and surveys	1,675.39	2,418.62	1,952.60	1,909.94	2,406.98
Federal taxes	230.46	223.92	2,096.79	1,160.91	1,550.77
State and other taxes	5,446.77	9,499.75	7,482.52	7,808.25	10,005.41
Fire department and taxes	1,247.66	1,654.45	1,389.71	1,341.83	1,857.75
Expenses of adjustment of losses	2,733.32	4,638.64	3,683.99	3,693.32	5,212.78
Rents	1,774.52	2,760.98	2,176.97	1,950.22	2,489.62
Advertising	374.60	982.68	645.66	862.29	1,452.46
Legal expenses	118.38	223.49	161.04	141.61	196.77
Furniture and fixtures	361.67	726.05	224.92	323.67	536.16
Maps	580.29	895.28	651.40	585.71	645.49
Underwriters boards	2,562.29	4,270.75	4,013.80	3,904.76	5,674.73
Allowance to local agents, miscellaneous expenses	80.50	79.81	44.95	65.02	13.60
Repairs and expenses (not taxes) on real estate	1,874.32	2,723.15	2,348.39	.....	3,456.13

COPY BOUND CLOS

EXHIBIT NO. 19.

GLEN FALLS INSURANCE COMPANY.

Glen Falls, N. Y., September 14, 1918.

The Missouri Inspection Bureau,
1330-1341 Pierce Building,
St. Louis, Missouri.

Gentlemen:

In reply to your letter of September 11th, we would state that in our report to the Missouri Insurance Department, entitled "Underwriting Experience by Classes" for 1915, 1916 and 1917, the interest earned was figured on the unearned premiums of Missouri business. The interest earned on Capital Stock and Surplus and the proportion of Home and Departmental expenses subdivided into Underwriting Expenses and Investment Expense are pro rated for Missouri in the proportion that Missouri premiums bear to total premiums.

Yours very truly,

R. C. CARTER,
Treasurer.

RCC-GMS.

OSE IN CENTER

EXHIBIT GLEN FALLS INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$4,411.25	$3,732.83	$3,978.27	$3,607.73	$3,424.97
Interest on deposits	346.98	194.53	388.80	456.33	400.11
Interest on bills receivable	7.16	1.67	.....	1.72	1.28
Interest from all other sources	3,072.60	3,060.80	3,334.92	2,638.92	2,095.90
Gross rents from company property	357.25	654.02	742.74	703.09	572.38
Premiums on principal risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	40.66	1.19	1.74	.....	.....
Disbursements:					
Salaries and expenses, special and general agents	4,535.98	4,645.92	3,746.10	3,679.96	2,786.71
Salaries and fees, home and branch office	2,419.27	2,200.45	3,722.67	3,723.98	3,295.46
Printing and stationery	635.04	679.37	529.41	591.68	559.14
Postage and exchange	511.53	484.43	510.78	425.00	406.34
Inspections and surveys	359.51	266.27	311.97	318.16	1,081.27
Federal taxes	82.07	39.31	643.44	361.32	115.27
State and other taxes	1,684.17	1,896.83	1,708.44	1,722.40	1,527.46
Fire department and taxes	300.03	309.01	333.81	260.39	240.11
Expenses of adjustment of losses	1,230.79	1,361.39	1,345.41	1,213.45	1,082.71
Rents	200.88	324.00	360.00	345.85	299.88
Advertising	92.25	220.54	149.13	199.81	340.98
Legal expenses	23.00	8.48	19.74	38.14	16.38
Furniture and fixtures	40.92	163.57	106.29	103.22	150.69
Maps	364.67	319.87	282.36	239.72	186.23
Underwriters boards	811.04	858.95	1,028.37	868.27	*
Allowance to local agents, miscellaneous expenses	28.56	468.07	527.46	285.87	447.86
Repairs and expenses (not taxes) on real estate	3.39	22.00	9.48	426.06	362.92

*Included in inspections and surveys.

COPY BOUND CLOS

EXHIBIT NO. 20.

HARTFORD FIRE INSURANCE COMPANY.

Chicago, September 14, 1918.

Messrs. Waterworth & Hess, Managers,
Missouri Inspection Bureau,
No. 1330-1341 Pierce Building,
St. Louis, Mo.

Gentlemen:—

Referring to your letter of the 11th respecting method of arriving at the items of interest and expenses in the report accompanying annual statement to the Insurance Department of Missouri, we have to advise that we answered the item as to interest over our affidavits that the method employed was as the proportion of Missouri premiums bore to total premiums.

In the case of home and departmental expenses that item represents overhead expense in the operation of the business and the amount stated in our affidavit was arrived at in Missouri on the basis as premiums written in the state bore to total premiums.

Yours very truly,

DUGAN & CARR,
Agents.

CLOSE IN CENTER

EXHIBIT HARTFORD FIRE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Loss and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$27,270.12	$31,396.40	$24,889.81	$27,497.60	$26,421.71
Interest on deposits	442.23	475.46	658.15	835.63	1,142.61
Interest on bills receivable	19.40	50.82	.....	61.94	88.24
Interest from all other sources	780.56	741.58	693.55	723.46	612.41
Gross rents from company property	1,457.34	1,340.23	1,157.14	1,229.68	1,279.80
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	51.61	4.32	34.89	3.35
Miscellaneous	27.86	42.04	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	23,187.00	27,223.75	25,420.42	26,407.08	25,368.89
Salaries and fees home and branch office	13,082.72	21,766.30	19,331.54	23,431.94	24,503.58
Printing and stationery	3,626.36	4,550.47	3,923.40	4,938.09	5,197.23
Postage and exchange	3,041.14	3,580.20	3,306.53	3,603.10	3,615.70
Inspections and surveys	1,526.22	2,250.60	2,011.80	1,823.69	1,840.83
Federal taxes	519.18	967.82	3,107.65	4,113.79	1,628.77
State and other taxes	14,582.01	17,631.77	15,324.88	19,822.60	19,696.45
Fire department and taxes	2,200.66	3,343.33	2,799.20	3,358.58	3,219.07
Expense of adjustment of losses	5,579.55	7,169.74	7,671.27	8,815.36	9,496.03
Rents	2,632.31	2,777.21	2,528.60	3,486.09	3,042.66
Advertising	1,974.84	4,003.26	2,490.13	2,813.64	2,463.37
Legal expenses	482.44	419.69	627.94	512.81	593.70
Furniture and fixtures	740.74	1,120.45	1,239.87	1,100.81	1,469.64
Maps	972.89	1,177.54	945.38	849.47	698.79
Underwriters boards	6,080.09	9,088.79	6,711.44	773.02	8,460.30
Allowance to local agents, miscellaneous expenses	.....	.....	.....	.....	.....
Repairs and expenses (not taxes) on real estate	576.63	1,991.38	662.15	370.47	744.01

COPY BOUND CLO

EXHIBIT NO. 21.

TELEGRAM.

New York, N. Y., September 16, 1918.

Waterworth & Hess,
Pierce Bldg.,
St. Louis, Mo.

The combined salaries of the president, ranking vice-president, and the secretary of the Home Insurance Company for the year nineteen seventeen assignable to Missouri business is two thousand seven hundred thirty-eight dollars, which sum bears the same proportion to the total of said salaries paid in that year as the total amount of gross premiums written in Missouri in that year bears to the total gross premiums of this company, including all fields and all classes of business transacted in nineteen seventeen.

C. A. LUDLUM,
Vice-President.

LOSE IN CENTER

EXHIBIT HOME INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$56,801 60	$65,283 42	$59,025 21	$68,223 96	$60,952 29
Interest on deposits	887 40	1,406 97	842 12	1,360 58	1,080 88
Interest on bills receivable	117 10	131 21	207 78	193 36	123 37
Interest from all other sources	44 98	26 27	11 02	11 89	7 83
Gross rents from company property					
Premiums on perpetual risks					
Conscience fund		33 84			
Miscellaneous	53 18	18 39			
Disbursements:					
Salaries and expenses special and general agents	19,940 96	23,373 55	21,540 49	24,943 58	23,696 88
Salaries and fees home and branch office	19,872 45	23,031 01	21,764 16	28,646 33	24,301 57
Printing and stationery	8,621 52	11,674 21	9,352 56	10,865 25	9,182 84
Postage and exchange	4,399 34	5,021 24	4,630 03	5,974 23	2,539 73
Inspections and surveys	3,938 09	4,720 28	5,510 15	6,064 84	*11,090 62
Federal taxes	9,799 00	811 27	4,060 57	3,414 73	2,110 88
State and other taxes	15,149 05	18,124 44	17,126 07	22,308 43	19,967 73
Fire department and taxes	1,998 67	2,174 88	2,119 91	2,221 34	2,259 21
Expense of adjustment of losses	6,929 96	8,879 07	9,645 24	12,105 66	12,237 89
Rents	5,773 18	6,900 70	5,537 28	6,805 47	5,244 78
Advertising	4,250 18	3,784 75	2,541 33	3,389 67	1,111 25
Legal expenses	308 28	214 10	175 03	121 89	120 80
Furniture and fixtures	924 30	1,031 58	963 19	1,092 77	1,483 11
Maps	816 15	1,075 36	764 75	910 57	509 78
Underwriters boards	4,921 52	6,188 42	4,869 43	6,643 27	
Allowance to local agents, miscellaneous expenses	173 18	163 86	240 58	271 01	
Repairs and expenses (not taxes) on real estate					

*Includes underwriters boards.

3526-A

COPY BOUND CLOS

EXHIBIT NO. 22.

INSURANCE COMPANY OF NORTH AMERICA.

Philadelphia, September 16, 1918.

Messrs. Waterworth and Hess,
Pierce Building,
St. Louis, Mo.

Dear Sirs:

In response to the request of Messrs. Dugan and Carr, I advise you that the salaries paid to the President, Vice-president and Secretary of this Company for the year 1917 are $55,000.

The total net Fire and Marine premiums for that year amounted to $20,051,000 and the net premiums written in the State of Missouri were $298,000, or about 1.5%.

The amount of the above salaries, therefore, apportioned to the State of Missouri, upon the basis of the relation of the business written to the total business, is 1.5% or $825

Yours very truly,
JOHN O. PLATT,
Vice-President.

INSURANCE COMPANY OF NORTH AMERICA.

Chicago, September 13, 1918.

Missouri Inspection Bureau,
Pierce Building,
St. Louis, Mo.

Gentlemen:—

Replying to your inquiry of the 11th inst. we beg to advise you that in our report to the Missouri Insurance Department, entitled "Underwriting Experience by Classes" for 1915, 1916 and 1917 the following items of income and outgo are prorated for Missouri in the proportion that Missouri premiums bear to total premiums.

These items are as follows:

"Interest earned on unearned premiums on Missouri business"

"Interest earned on capital stock and surplus, pro rata for Missouri .

"Proportion of home and departmental expenses (not included in any of the above). subdivided into Underwriting Expenses and Investment Expenses."

Yours truly,
C. R. TUTTLE,
Manager.

3626-B

LOSE IN CENTER

EXHIBIT INSURANCE COMPANY OF NORTH AMERICA.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$11,944 79	$15,613 99	$14,771 17	$16,832 32	$14,796 88
Interest on deposits	443 55	425 61	519 12	659 27	797 06
Interest on bills receivable	4 27	5 29	.....	47 73	74 80
Interest from all other sources	255 85	283 98	239 36	181 86	126 78
Gross rents from company property	289 05	333 04	336 76	402 99	354 24
Premiums on perpetual risks	221 56	286 23	263 11	245 41	557 84
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	96 33	64 05	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	8,857 61	11,252 77	10,367 62	11,473 39	9,280 00
Salaries and fees home and branch office	3,774 67	4,743 01	4,964 55	6,830 19	11,614 72
Printing and stationery	1,516 31	1,653 54	1,579 70	1,993 61	2,041 92
Postage and exchange	1,102 19	1,386 95	1,400 78	1,610 76	1,223 22
Inspections and surveys	950 19	1,143 56	1,224 17	1,132 00	1,048 85
Federal taxes	196 93	216 48	1,418 34	1,382 79	1,044 14
State and other taxes	5,174 08	6,142 84	5,552 65	6,423 56	5,526 75
Fire department and taxes	755 02	780 16	681 51	968 60	759 86
Expense of adjustment of losses	1,644 15	2,397 86	2,512 15	2,348 43	1,806 70
Rents	1,000 65	1,191 79	1,127 09	1,420 40	1,112 77
Advertising	492 00	673 90	537 79	400 30	588 19
Legal expenses	364 67	205 87	309 43	182 59	198 67
Furniture and fixtures	163 02	232 25	133 18	545 37	389 89
Maps	400 37	412 71	395 53	339 17	203 70
Underwriters boards	1,262 64	1,722 33	1,606 48	1,999 49	1,650 77
Allowance to local agents, miscellaneous expenses	5,549 56	6,864 07	6,713 24	7,969 42	901 38
Repairs and expenses (not taxes) on real estate	103 04	62 70	347 55	534 18	217 08

COPY BOUND CLOSE

EXHIBIT NO. 23.

EXHIBIT NATIONAL FIRE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissons.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$16,776.76	$16,540.10	$15,383.78	$15,389.95	$16,875.17
Interest on deposits	784.69	462.73	731.20	822.24	943.10
Interest on bills receivable	234.43	223.87	233.25	29.95	234.27
Interest from all other sources	3,142.89	2,795.00	3,161.25	3,209.40	2,741.86
Gross rents from company property	1,249.23	1,096.82	969.18	957.56	985.02
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	6.02	.....	.....	.....	19.65
Miscellaneous	17.92	.....	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	32,710.69	30,620.93	29,901.79	30,654.85	34,019.04
Salaries and fees home and branch office	7,590.43	7,509.74	8,055.97	7,991.86	8,816.06
Printing and stationery	2,358.65	2,153.91	2,178.56	2,593.27	2,879.14
Postage and exchange	2,396.39	2,423.16	2,443.20	2,397.14	2,724.77
Inspections and surveys	412.22	513.48	567.39	575.14	738.88
Federal taxes	176.87	383.95	1,692.10	1,440.69	873.79
State and other taxes	9,836.06	10,154.03	9,858.18	11,220.05	12,155.20
Fire department and taxes	1,787.62	1,850.84	1,829.06	2,072.56	2,201.54
Expense of adjustment of losses	1,825.60	1,867.04	1,887.07	2,554.28	3,004.93
Rents	1,732.81	1,700.35	1,711.23	1,604.13	1,673.89
Advertising	935.95	1,069.26	781.73	729.06	817.15
Legal expenses	370.67	570.07	666.66	409.66	373.09
Furniture and fixtures	630.63	310.76	391.65	578.30	711.90
Maps	495.99	415.57	427.30	581.53	339.23
Underwriters boards	3,698.62	3,777.84	4,110.37	4,326.48	4,909.82
Allowance to local agents, miscellaneous expenses	61.61	57.12	56.48	53.97	38.46
Repairs and expenses (not taxes) on real estate	170.61	130.25	84.03	122.88	129.06

SE IN CENTER

EXHIBIT NO. 24.

TELEGRAM.

New York, N. Y., September 17, 1913.

Missouri Inspection Bureau,
1330 Pierce Building,
St. Louis, Mo.

Your letter eleventh instant. Only information we can furnish in a hurry is nineteen seventeen figures as follows:

First item, four thousand five forty-seven, eighty-eight cents; second item, four thousand five fifty, fifty-one cents; third item, seventeen thousand one thirteen fifteen, seven cents, made up of sixteen thousand eight fifty-six eighty cents underwriting expense, two fifty-six, seventy-seven cents investment expense.

NIAGARA FIRE INSURANCE COMPANY.

COPY BOUND CL

EXHIBIT NIAGARA FIRE INSURANCE COMPANY

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$9,959.96	$9,042.66	$8,862.09	$10,281.70	$10,865.16
Interest on deposits	107.41	106.89	157.02	84.86	329.28
Interest on bills receivable	6.40	21.94	.....	.20	3.69
Interest from all other sources	988.49	893.74	838.02	837.45	507.21
Gross rents from company property	.....	.....	.....	.....	.....
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	34.93	.....	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	4,776.14	4,126.29	3,855.66	4,184.28	4,068.87
Salaries and fees home and branch office	7,424.20	6,833.05	6,840.30	9,265.41	9,327.48
Printing and stationery	1,222.55	1,243.90	1,135.62	1,485.49	1,843.65
Postage and exchange	873.42	816.52	823.20	1,082.80	1,135.74
Inspections and surveys	783.77	687.95	681.87	755.24	552.84
Federal taxes	97.79	181.07	644.31	913.41	340.71
State and other taxes	3,771.30	3,484.47	3,444.48	3,945.19	3,474.51
Fire department and taxes	444.04	264.30	223.92	356.93	306.39
Expense of adjustment of losses	1,487.36	1,547.96	1,547.07	1,745.05	1,781.40
Rents	1,522.36	1,436.32	1,325.13	1,727.23	1,285.68
Advertising	143.23	75.31	69.12	101.46	111.63
Legal expenses	223.41	127.12	139.02	176.09	154.95
Furniture and fixtures	302.18	127.31	242.88	422.01	920.25
Maps	792.35	408.94	350.58	384.27	346.89
Underwriters boards	1,475.56	1,750.98	1,626.87	1,594.46	1,934.94
Allowance to local agents, miscellaneous expenses	.....	.....	.....	.....	.....
Repairs and expenses (not taxes) on real estate	.....	.....	.....	.....	.....

3630

CLOSE IN CENTER

EXHIBIT NO. 25.

NORTHWESTERN NATIONAL INSURANCE COMPANY.

Milwaukee, September 13, 1918.

Waterworth & Hess,
1330 Pierce Bldg.,
St. Louis, Missouri.

Gentlemen:—

Replying to your letter dated the 11th inst. will state in our report to the Missouri Insurance Department covering our "Underwriting Experience by Classes" for the years 1915, 1916 and 1917, we pro rated the following items of income and outgo for Missouri in the proportion that Missouri premiums bear to total premiums—these items being as follows:—

"Interest earned on unearned premiums on Missouri business."
"Interest earned on capital stock and surplus, pro rata for Missouri."
"Proportion of home and departmental expenses (not included in any of above) subdivided into Underwriting Expenses and Investment Expenses."

Trusting this gives you the information desired, we remain

Very truly yours,
JOSEPH HUBEL,
2nd Vice-President.

COPY BOUND CLOSE

EXHIBIT NORTHWESTERN NATIONAL INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$10,551.61	$11,035.08	$11,400.68	$12,943.93	$13,046.08
Interest on deposits	169.76	125.24	1,777.26	185.01	162.19
Interest on bills receivable	43.51	51.36	73.53	4.77	100.06
Interest from all other sources	3,139.14	3,336.03	4,206.03	5,037.50	4,879.00
Gross rents from company property	441.01	530.00	570.00	682.00	844.70
Premiums on perpetual risks					136.47
Conscience fund					4.42
Miscellaneous		2.65			
Disbursements:					
Salaries and expenses special and general agents	13,325.42	14,551.10	16,175.69	18,415.24	18,481.04
Salaries and fees home and branch office	5,582.12	5,707.94	6,268.35	6,814.85	6,985.89
Printing and stationery	1,033.34	776.29	959.94	1,212.04	2,156.92
Postage and exchange	1,251.54	1,299.98	1,355.35	1,608.84	1,621.02
Inspections and surveys	15.21	16.01	17.95	19.22	18.05
Federal taxes	206.70	219.58	1,012.21	1,141.79	770.27
State and other taxes	5,266.88	5,649.70	6,341.02	6,036.44	6,045.79
Fire department and taxes	822.88	891.78	981.03	1,175.71	1,138.82
Expense of adjustment of losses	2,175.28	2,208.72	2,487.42	2,883.43	2,509.74
Rents	424.00	530.00	570.00	682.00	767.00
Advertising	66.04	57.40	53.07	60.70	75.22
Legal expenses	48.39	24.11	93.54	37.20	188.96
Furniture and fixtures	160.85	92.70	55.00	231.20	91.63
Maps	215.18	336.67	210.67	275.71	171.40
Underwriters boards	636.95	675.86	902.82	1,258.04	1,270.51
Allowance to local agents, miscellaneous expenses	375.98	382.18	417.75	338.89	503.98
Repairs and expenses (not taxes) on real estate	243.22	235.80	266.42	323.39	409.81

SE IN CENTER

EXHIBIT NO. 26.

THE PHOENIX INSURANCE COMPANY OF HARTFORD, CONN.

Personal.

Messrs. Waterworth & Hees,
Pierce Building,
St. Louis, Missouri.

Gentlemen:

Pursuant to a suggestion conveyed in a note from Messrs. Dugan & Carr, Western General Agents of the Hartford Fire Insurance Company, we beg to advise that the proportion of the salaries of the Executive Officers of this Company who have anything whatever to do with its transactions in Missouri, properly chargeable to the premium income derived from that State, amounts to $1,768.69. In this connection, it seems proper to explain that the agents of this company in the State of Missouri report direct to the head office. While we are quite willing to submit any and all information that may be desired by the Attorney General of Missouri, covering the cost of the conduct of the fire insurance business in that State, it may not be amiss to add that the smallest part of the cost is represented by the salaries paid the corporation's executives.

Very truly yours,
EDW. MILLIGAN,
President.

3633

COPY BOUND CLOSE IN

EXHIBIT PHOENIX INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$15,822.25	$28,970.42	$29,706.38	$36,506.36	$30,567.60
Interest on deposits	694.40	770.00	700.13	1,255.67	788.28
Interest on bills receivable	14.87	24.30	114.84	91.65	71.84
Interest from all other sources	318.96	323.92	435.47	580.74	471.04
Gross rents from company property	517.21	643.57	618.68	730.52	2,202.00
Premiums on perpetual risks					
Conscience fund			2.20	9.18	
Miscellaneous	471.74	584.63			
Disbursements:					
Salaries and expenses, special and general agents	16,323.66	20,224.43	17,167.52	19,168.20	15,592.84
Salaries and fees, home and branch offices	6,545.45	11,956.19	10,728.56	14,321.46	12,341.20
Printing and stationery	2,059.99	3,384.28	3,616.45	4,137.12	3,891.40
Postage and exchange	1,552.68	1,810.16	1,767.30	1,887.82	1,818.76
Inspections and surveys	801.36	1,487.60	825.70	673.71	550.40
Federal taxes	238.90	387.75	427.20	634.75	1,517.96
State and other taxes	5,622.73	8,215.74	9,342.30	11,337.76	8,962.08
Fire department and taxes	616.68	819.63	696.78	914.43	1,646.96
Expense of adjustment of losses	1,273.64	2,208.29	2,305.03	2,588.40	2,056.48
Rents	1,195.06	1,821.48	1,221.44	1,910.46	1,986.08
Advertising	250.49	324.82	188.14	198.03	329.64
Legal expenses	235.48	310.53	303.78	247.55	274.60
Furniture and fixtures	844.20	437.43	188.80	438.19	1,063.96
Maps	508.21	668.20	472.56	524.28	547.32
Underwriters' boards	2,788.74	3,560.11	4,200.50	5,325.37	4,910.68
Allowance to local agents, miscellaneous expenses					482.24
Repairs and expenses; not taxes on real estate	115.42	206.52	159.24	168.76	884.40

IN CENTER

EXHIBIT NO. 27.

EXHIBIT QUEEN INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks.	$12,386.13	$14,904.51	$16,597.10	$18,674.85	$20,535.87
Interest on deposits.....	277.95	289.15	420.84	450.34	609.68
Interest on bills receivable...	.54	1.64	2.02	.....	5.66
Interest from all other sources	100.30	120.90	137.26	149.32	144.90
Gross rents from company property.....	.....	.....	.....	.....	.....
Premiums on personal risks..	.....	.....	.....	.....	.....
Conscience fund.....	.....	.....	.....	.....	.....
Miscellaneous.....	.....	.....	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents.....	6,057.68	7,431.92	8,243.92	8,747.82	9,503.46
Salaries and fees, home and branch office.....	11,715.58	14,051.08	15,141.80	17,195.63	19,823.65
Printing and stationery.....	1,603.85	1,653.46	1,789.44	2,283.99	2,525.40
Postage and exchange.....	1,146.92	1,292.07	1,440.46	1,658.58	1,944.01
Inspections and surveys.....	1,006.84	1,207.32	1,564.73	1,783.74	4,969.24
Federal taxes.....	154.20	385.01	1,393.20	1,050.36	1,752.83
State and other taxes.....	3,989.53	5,073.16	5,429.74	6,676.39	6,575.15
Fire department and taxes...	1,025.07	1,110.60	1,327.24	1,413.07	1,444.35
Expense of adjustment of losses.....	2,380.92	2,951.68	3,712.15	3,911.24	4,014.47
Rents.....	1,471.11	1,739.36	1,882.45	2,116.14	2,205.98
Advertising.....	698.56	849.42	938.13	951.65	1,399.18
Legal expenses.....	44.54	62.13	79.03	38.00	47.06
Furniture and fixtures.....	149.02	329.04	294.55	236.53	559.31
Maps.....	513.16	546.31	544.29	528.68	477.85
Underwriters' boards	1,731.55	2,034.67	2,226.88	2,621.54	3.4485
Allowance to local agents, miscellaneous expenses....	495.72	448.27	466.08	430.15	422.10
Repairs and expenses; not taxes on real estate.....	.....	1,342.07	.....	.....	.....

EXHIBIT NO. 28.

SAINT PAUL FIRE AND MARINE INSURANCE COMPANY OF ST. PAUL.

Saint Paul, Sept. 13, 1918.

Messrs. Waterworth & Hess,
Pierce Bldg.,
St. Louis, Mo.

Gentlemen:

Conforming to a request therefor, we advise you that the salaries of the President, Vice President and Secretary of the St. Paul Fire & Marine Insurance Company amount to the sum of $40,000.00 per year.

You do not ask that this statement be made under oath, and, therefore, it is not so made; but it is a fact nevertheless, which I am willing to properly verify if required.

Yours truly,
A. W. PERRY,
Secretary.

SAINT PAUL FIRE AND MARINE INSURANCE COMPANY OF ST. PAUL.

Saint Paul, Sept. 14, 1918.

Missouri Inspection Bureau,
Pierce Building,
St. Louis, Mo.

Gentlemen:

We have your letter of the 11th inst. and in reply we wish to say that the items
"Interest earned on Capital Stock and Surplus pro rata for Missouri,"
and
"Proportion of home and departmental expenses (not included in above item or in the item, "Interest earned on Unearned Premiums on Missouri business"), subdivided into Underwriting Expenses and Investment Expenses,"

shown in our report to the Missouri Insurance Department, entitled "Underwriting Experience by Classes" for 1915, 1916 and 1917, were prorated for Missouri in the proportion that Missouri premiums bear to total premiums, while the item
"Interest earned on unearned premiums on Missouri business,"
was pro rated in the proportion that Invested Unearned Missouri Premiums bear to Invested Unearned Total Premiums.

Yours truly,
A. E. KREBS,
Auditor.

EXHIBIT ST. PAUL FIRE AND MARINE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks.	$5,852.86	$7,608.52	$6,092.98	$8,867.54	$8,446.96
Interest on deposits.....	88.85	129.12	105.08	193.64	256.62
Interest on bills receivable...	183.80	222.95	92.31	.....	95.86
Interest from all other sources	572.69	877.58	1,107.79	1,455.69	1,563.16
Gross rents from company property.....	308.00	361.42	267.09	357.44	324.68
Premiums on perpetual risks.	.....	.....	.....	.....	.....
Conscience fund.....	4.14	.....	.51	7.82	.....
Miscellaneous.....	132.75	29.22	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents.....	3,794.99	4,757.81	3,852.68	5,559.12	5,380.75
Salaries and fees, home and branch office.....	2,212.31	3,008.24	2,440.89	3,947.49	3,910.56
Printing and stationery.....	861.10	956.75	742.78	?1,440.01	1,168.57
Postage and exchange.....	592.22	782.34	548.50	773.49	806.70
Inspections and surveys.....	427.82	491.08	184.39	395.28	360.93
Federal taxes.....	110.23	142.19	833.59	992.63	358.95
State and other taxes.....	2,990.59	3,722.14	2,810.05	4,805.85	5,538.83
Fire department and taxes...	101.77	123.88	141.25	114.22	65.98
Expense of adjustment of losses.....	1,257.28	1,752.19	1,801.20	2,862.60	2,533.99
Rents.....	233.33	289.87	220.18	302.15	290.26
Advertising.....	126.86	202.31	85.83	.....	198.79
Legal expenses.....	218.47	171.51	240.67	271.70	250.55
Furniture and fixtures.....	60.28	8.62	40.26	37.31	141.92
Maps.....	167.36	185.61	120.48	176.46	144.73
Underwriters' boards.....	208.26	489.76	671.70	842.14	1,184.59
Allowance to local agents, miscellaneous expenses....	123,59	24.97	58.02	118.47	104.75
Repairs and expenses (not tax) on real estate.....	77.71	76.32	65.57	75.09	127.45

*Includes advertising.

EXHIBIT NO. 29.

EXHIBIT COMMERCIAL UNION ASSURANCE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks.	$6,925.31	$4,701.90	$5,324.36	$5,650.41	$11,440.11
Interest on deposits.....	224.63	156.62	411.46	1,029.64	2,706.55
Interest on bills receivable...	.12	.....	13.76	.....	1.20
Interest from all other sources	46.96	18.27	26.10	32.22	74.17
Gross rents from company property.....	2,031.93	1,439.47	1,383.88	1,609.13	2,885.90
Premiums on perpetual risks.	15.62	13.19	44.86	44.21	354.62
Conscience fund.....	.....	.....	.....	.....	.....
Miscellaneous.....	.....	7.56	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents.....	3,214.54	2,466.79	4,654.32	5,556.89	10,465.43
Salaries and fees, home and branch office.....	6,163.81	4,539.61	5,454.92	6,291.72	11,593.75
Printing and stationery.....	1,302.37	992.04	1,315.68	1,565.43	2,738.07
Postage and exchange.....	692.35	553.52	780.26	1,041.05	1,879.53
Inspections and surveys.....	651.84	384.61	872.72	804.77	*6,408.38
Federal taxes.....	211.51	95.23	827.64	1,087.30	783.20
State and other taxes.....	4,019.27	2,978.32	3,883.26	5,263.27	11,450.21
Fire department and taxes...	1,014.94	785.97	1,072.24	1,052.04	.....
Expense of adjustment of losses.....	2,108.37	1,502.00	1,965.52	2,600.72	4,453.08
Rents.....	813.28	569.65	790.54	939.57	1,722.70
Advertising.....	168.08	121.65	146.94	197.52	326.28
Legal expenses.....	77.50	11.49	49.60	22.38	63.04
Furniture and fixtures.....	152.05	110.67	129.86	246.15	327.44
Maps.....	224.81	161.49	239.36	266.85	455.80
Underwriters' boards.....	1,521.20	1,227.22	1,562.88	2,340.85	.....
Allowance to local agents, miscellaneous expenses....	266.10	193.12	330.50	334.90	.....
Repairs and expenses (not tax) on real estate.....	765.02	625.72	543.74	748.65	1,351.32

*Includes underwriters boards.

EXHIBIT NO. 30.

THE LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY, LIMITED.

Chicago, September 16, 1918.

Messrs. Waterworth & Hess,
Pierce Building,
St. Louis, Missouri.

Dear Sirs:—

RE: 10% SURCHARGE—MISSOURI.

At the request of Messrs. Dugan & Carr, General Agents of the Hartford Insurance Company, we beg to advise you that the combined salaries of the three officials representing the President, Vice-president, and Secretary of this Company at the Chicago Office is $20,000.00 per annum, and the proportion of such salaries which would be applicable to the State of Missouri in proportion as the premiums in Missouri may bear to the total business transacted by the Company in the territory under its jurisdiction would be $2,320.00.

You are probably aware that the Liverpool & London & Globe Insurance Company, Limited, is virtually four separate companies in this Country, having Boards of Directors and the usual other officials of a regularly organized company, at the Cities of New York, Chicago, New Orleans and San Francisco.

Hoping this information will meet your requirements,

Yours very truly,
WILLIAM S. WARREN,
Manager.

THE LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY, LIMITED.

Chicago, September 12, 1918.

Missouri Inspection Bureau,
Pierce Bldg.
St. Louis Mo.

Gentlemen:—

As requested we are enclosing sworn statement covering the question raised by you in your letter of the 11th inst., which we trust will be of service in your attempt to secure the ten percent war surcharge.

Yours very truly,
R. H. PURCELL,
Assistant Manager.

I, William S. Warren, Manager of the Chicago Branch of the Liverpool and London and Globe Insurance Company, Ltd., being duly sworn, dispose and say that in the report made by this Company to the Missouri Insurance Department covering the years 1915, 1916 and 1917, the following items of income and outgo are duly prorated for Missouri in the proportion that Missouri premiums bear to total premiums.

These items are as follows:

"Interest earned on unearned premiums on Missouri business."
"Interest earned on capital stock and surplus, pro rata for Missouri."
"Proportion of home and departmental expenses (not included in any of above) subdivided into Underwriting Expenses and Investment Expenses."

WILLIAM S. WARREN,
Manager.

Subscribed and sworn to before me this 12th day of September, 1918.

C. H. THAWBRIDGE,
Notary Public.

Residing in Page County.
Commission expires March 4, 1921.

2620

EXHIBIT LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$6,607.17	$11,499.10	$8,394.82	$9,278.50	$11,470.00
Interest on deposits	436.20	1,027.49	667.90	1,030.57	1,267.73
Interest on bills receivable	14.07	50.27	55.62	.....	67.30
Interest from all othersources	3,404.55	6,622.01	4,318.85	4,494.38	2,925.22
Gross rents from company property	2,303.60	5,168.48	4,079.97	4,584.12	4,779.92
Premiums on perpetual risks	65.90	106.09	80.26	110.95	133.35
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	4.02	6.76	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	5,917.95	10,395.55	8,565.54	8,730.36	9,325.74
Salaries and fees home and branch office	9,064.90	16,534.27	12,060.90	13,854.68	19,184.50
Printing and stationery	1,236.87	2,541.04	1,676.70	1,899.06	2,557.82
Postage and exchange	923.80	1,519.27	1,110.94	1,509.09	1,590.30
Inspections and surveys	1,060.45	1,874.54	1,504.93	1,845.27	2,223.29
Federal taxes	203.77	633.44	2,263.87	1,823.46	1,474.41
State and other taxes	4,969.95	10,371.23	7,936.86	8,320.51	9,349.49
Fire department and taxes	1,048.75	1,940.32	900.93	700.28	1,596.26
Expenses of adjustment of losses	2,706.05	4,229.86	3,398.85	4,435.20	4,311.13
Rents	1,525.80	2,762.89	2,055.46	2,265.65	2,665.89
Advertising	1,064.27	2,190.59	1,287.78	1,705.37	1,048.21
Legal expenses	65.77	136.00	62.72	140.45	61.12
Furniture and fixtures	719.17	268.17	100.99	335.37	505.94
Maps	304.47	508.24	347.62	367.15	418.14
Underwriters boards	2,842.02	5,100.56	3,686.98	4,824.26	6,007.69
Allowance to local agents, miscellaneous expenses	9.40	40.87	8.96	150.71	322.08
Repairs and expenses (not tax) on real estate	1,864.35	2,391.98	2,132.51	2,464.77	2,261.25

EXHIBIT NO. 31.

EXHIBIT NORTH BRITISH AND MERCANTILE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$7,922.04	$8,956.93	$7,544.76	$11,475.07	$13,402.62
Interest on deposits	85.27	42.28	125.05	282.47	249.83
Interest on bills receivable	4.80	5.67	.....	.....	.....
Interest from all other sources	.....	.....	4.74	.20	7.57
Gross rents from company property	.....	.....	.....	.....	.....
Premiums on perpetual risks	20.11	41.53	77.05	97.38	164.38
Conscience fund	.....	9.31	.....	.....	.....
Miscellaneous	.....	.....	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	5,493.74	6,579.93	6,014.25	9,524.59	8,084.93
Salaries and fees home and branch office	7,336.75	8,591.89	7,235.75	8,862.10	11,481.99
Printing and stationery	770.26	924.21	713.18	1,241.03	1,597.13
Postage and exchange	747.96	776.71	709.99	998.44	742.05
Inspections and surveys	449.14	468.10	376.23	409.56	4,325.10
Federal taxes	200.57	177.34	732.48	1,074.64	379.12
State and other taxes	2,851.39	2,986.06	2,703.81	4,365.94	5,064.43
Fire department and taxes	1,263.67	1,544.56	1,033.53	1,454.52	1,792.83
Expense of adjustment of losses	1,143.48	1,279.77	1,150.78	1,535.78	2,104.67
Rents	743.21	1,004.08	895.04	1,185.95	946.76
Advertising	93.00	175.23	182.78	202.71	223.98
Legal expenses	94.27	76.57	35.03	74.70	45.63
Furniture and fixtures	175.03	90.88	119.39	135.66	526.46
Maps	493.18	387.13	305.28	376.79	223.90
Underwriters boards	2,059.68	2,220.07	2,067.86	3,149.49	.....
Allowance to local agents, miscellaneous expenses	550.42	534.28	443.60	400.93	.....
Repairs and expenses (not taxes) on real estate	.....	.....	.....	.....	.....

EXHIBIT NO. 32.

EXHIBIT NORTHERN ASSURANCE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$6.927.61	$7,670.38	$7,833.04	$8,605.20	$10,312.69
Interest on deposits	180.96	280.53	495.68	687.70	457.19
Interest on bills receivable	.....	.....	.....	.13	.....
Interest from all other sources	.....	125.43	240.95	246.70	233.90
Gross rents from company property	312.00	140.57	.....	.....	.....
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	.....	.....	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents	5,166.49	5,932.41	5,983.66	6,477.09	7,099.18
Salaries and fees home and branch office	8,840.87	9,462.28	9,034.37	9,237.47	9,298.21
Printing and stationery	972.35	1,426.18	1,160.12	1,263.86	1,658.90
Postage and exchange	799.69	874.28	843.99	915.86	1,148.76
Inspections and surveys	663.86	1,036.39	1,094.39	1,155.71	1,299.87
Federal taxes	258.88	126.72	861.04	757.57	532.68
State and other taxes	3,606.99	4,037.14	4,037.33	4,014.31	3,437.07
Fire department and taxes	1,067.78	1,262.74	1,303.01	1,544.90	895.62
Expense of adjustment of losses	1,382.67	1,612.33	1,794.66	1,664.92	1,999.62
Rents	1,053.78	1,209.89	1,152.27	1,151.54	1,246.83
Advertising	422.49	597.44	532.06	479.19	504.07
Legal expenses	87.48	84.15	99.50	99.97	92.51
Furniture and fixtures	227.53	195.66	156.45	192.73	406.55
Maps	402.13	366.75	368.26	380.25	394.17
Underwriters boards	2,028.43	1,609.71	2,140.99	2,066.75	1,729.51
Allowance to local agents, miscellaneous expenses	.....	.....	.....	.....	.....
Repairs and expenses (not taxes) on real estate	.....	43.69	.....	.....	.....

EXHIBIT NO. 33.

EXHIBIT PHOENIX ASSURANCE INSURANCE COMPANY, (London).

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks.	$4,753.83	$5,401.40	$5,707.28	$7,179.68	$8,723.80
Interest on deposits.....	291.45	219.21	227.79	302.74	359.31
Interest on bills receivable...	.23	.56	.....	.05	.....
Interest from all other sources	.....	.....	.....	.60	.29
Gross rents from company property.....	.....	.....	.....	.....	.....
Premiums on perpetual risks.	.....	.....	.....	.....	.....
Conscience fund.....	.....	.....	.....	.....	.....
Miscellaneous.....	.....	.....	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents.....	5,734.29	7,622.57	8,401.54	9,189.03	9,827.10
Salaries and fees, home and branch office.....	5,789.86	7,205.21	6,624.68	8,375.07	12,064.89
Printing and stationery.....	1,074.96	1,426.78	1,819.22	1,730.84	1,751.95
Postage and exchange.....	1,020.04	1,215.78	1,454.90	1,972.58	2,376.17
Inspections and surveys.....	734.60	856.78	958.98	1,189.78	1,245.78
Federal taxes.....	16.18	28.94	23.85	611.54	407.87
State and other taxes.....	2,752.15	3,293.84	3,574.03	4,825.67	5,432.42
Fire department and taxes...	1,130.84	1,382.11	1,490.85	1,858.18	2,166.42
Expense of adjustment of losses.....	1,687.84	2,072.17	2,009.17	2,418.73	2,809.11
Rents.....	891.66	1,021.98	875.29	1,213.34	1,597.72
Advertising.....	170.62	174.02	219.34	198.60	328.75
Legal expenses.....	32.10	5.20	9.99	23.26	6.67
Furniture and fixtures.....	377.52	536.60	122.67	281.83	591.36
Maps.....	303.38	450.34	456.06	321.71	388.51
Underwriters boards.....	1,313.13	1,603.47	1,519.32	2,043.16	2,580.60
Allowance to local agents, miscellaneous expenses....	326.27	492.78	353.14	442.07	694.84
Repairs and expenses (not taxes) on real estate.....	.....	.....	.....	.....	.....

EXHIBIT NO. 34.

THE ROYAL EXCHANGE ASSURANCE OF LONDON.

New York, September 11, 1918

Messrs. Waterworth & Hess, Mgrs.,
Missouri Inspection Bureau,
1330-1341 Pierce Building, St. Louis, Missouri.

Dear Sirs:

Replying to your favor of the 11th instant, wherein you request information relative to the method employed in arrving at "interest earned on unearned premiums on Missouri business," "interest earned on Capital Stock and Surplus, pro rata for Missouri" and "proportion of home and departmental expenses (not included in any of above), subdivided into Underwriting Expenses and Investment Expenses"—we desire to state that the answer to the first question was determined by taking the average rate of interest earned in the United States on the average unearned premiums. The unearned premiums were taken at the commencement and the end of the respective years. Under our system the premiums in force could be accurately ascertained.

In arriving at the answer to the second question "Interest earned on Capital Stock and Surplus, pro rata for Missouri"—we took the average of the policyholders surplus at the commencement and the end of the year and pro-rated the average in proportion that the Missouri premiums bear to the total premiums.

"The proportion of Home and Departmental expenses" was the average rate of these expenses as previously determined for office statistics. The same rate was applied for all other statistics for the same period and for other political subdivisions of the United States.

Trusting the information as set forth above may be of service and thanking you for your acknowledgment in due course, we are,

Yours faithfully,
R. D. HARVEY,
United States Manager.

EXHIBIT ROYAL EXCHANGE ASSURANCE CORPORATION INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$3,121.90	$3,371.15	$3,309.28	$4,672.73	$3,853.24
Interest on deposits	78.24	124.15	151.26	270.85	206.71
Interest on bills receivable	.....	.....	.....	.....	.....
Interest from all other sources	.....	.....	5.66	.....	.....
Gross rents from company property	.....	.....	.....	.....	.....
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	4.92	.....	.....	.....	4.18
Miscellaneous	.....	7.33	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents	3,284.13	3,143.18	2,292.42	2,638.96	2,013.67
Salaries and fees, home and branch office	2,897.86	2,962.21	2,584.29	3,456.59	2,667.02
Printing and stationery	387.18	411.67	338.59	543.29	441.38
Postage and exchange	332.54	367.12	345.92	429.43	322.34
Inspections and surveys	186.09	241.10	312.80	392.29	310.25
Federal taxes	22.77	37.78	483.84	499.42	305.23
State and other taxes	2,028.64	2,250.60	2,006.78	2,575.66	2,115.94
Fire department and taxes	579.68	524.67	473.82	646.16	489.43
Expense of adjustment of losses	878.10	927.83	951.14	1,126.97	970.33
Rents	361.38	348.58	338.75	425.91	324.41
Advertising	110.22	79.20	87.46	116.49	74.31
Legal expenses	2.94	6.07	3.62	24.85	17.14
Furniture and fixtures	7.06	12.90	13.82	21.28	18.72
Maps	135.99	148.27	101.95	132.18	101.31
Underwriters boards	839.45	911.29	814.24	1,006.71	808.98
Allowance to local agents, miscellaneous expenses	230.41	246.61	305.63	416.27	358.58
Repairs and expenses (not taxes) on real estate	.....	.....	.....	.....	.....

EXHIBIT NO. 35.

EXHIBIT FIRE ASSOCIATION INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$5,072.80	$5,415.54	$5,014.88	$5,420.43	$6,225.78
Interest on deposits	108.61	103.51	113.59	148.81	203.92
Interest on bills receivable	1.78	4.58	1.01	2.75	6.16
Interest from all other sources	2,567.59	2,665.43	2,399.50	3,024.80	3,204.89
Gross rents from company property	694.62	772.11	846.59	884.44	853.82
Premiums on perpetual risks	451.35	502.96	541.04	485.63	470.84
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	106.85	123.46	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents	6,282.88	6,437.11	6,028.43	6,513.54	7,388.70
Salaries and fees, home and branch office	3,914.23	4,297.52	4,255.63	4,624.60	4,795.80
Printing and stationery	641.30	687.41	589.76	751.08	979.42
Postage and exchange	603.46	616.59	591.51	622.89	724.42
Inspections and surveys	601.78	620.58	637.83	655.36	749.56
Federal taxes	110.14	113.43	614.73	529.72	390.39
State and other taxes	3,253.21	3,252.46	3,681.76	3,436.47	3,628.53
Fire department taxes	360.51	309.63	306.73	346.65	365.38
Expense of adjustment of losses	882.42	1,022.05	1,006.82	1,143.54	1,133.44
Rents	595.12	631.47	616.22	642.27	660.92
Advertising	115.52	120.78	106.81	122.89	221.56
Legal expenses	49.20	53.09	64.89	86.77	100.39
Furniture and fixtures	147.82	112.53	35.17	62.52	58.37
Maps	341.23	268.03	271.32	225.10	163.50
Underwriters boards	1,023.33	1,227.80	1,131.58	1,227.20	1,366.33
Allowance to local agents, miscellaneous expenses	234.67	320.47	267.31	312.20	588.96
Repairs and expenses (not taxes) on real estate	109.85	205.50	175.01	127.64	110.97

EXHIBIT NO. 35a.

FIREMEN'S INSURANCE COMPANY OF NEWARK, N. J.

Chicago, Sept. 14, 1918.

Messrs. Waterworth & Hess,
Pierce Bldg.,
St. Louis, Missouri.

10% Surcharge.

Gentlemen:

Replying to your letter of the 11th inst. on above subject, in which you ask whether certain items in a statement filed with the Missouri Department are pro rated in Missouri in the proportion that Missouri premiums bear to total premiums, I beg to reply as follows:

(1) Interest earned on unearned premiums on Missouri business—answer is "Yes."

(2) Interest earned on capital stock and surplus, pro rata for Missouri, nothing allowed in our statement.

(3) Proportion of home and departmental expenses, etc.—answer is "Yes."

I trust that this answers your purpose.

Yours truly,
NEAL BASSETT,
Vice-President.

B-S.

EXHIBIT FIREMEN'S INSURANCE COMPANY (NEWARK).

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks.	$4,356.69	$5,107.75	$5,436.01	$4,865.26	$7,691.73
Interest on deposits.....	23.66	30.89	23.86	41.80	31.37
Interest on bills receivable...	.....	.....	.....	.....	.....
Interest from all other sources	4,574.08	5,094.26	5,043.71	3,392.17	5,294.08
Gross rents from company property.....	3,405.78	3,877.42	3,572.01	2,431.97	4,274.07
Premiums on perpetual risks.	.....	.....	.....	.....	.....
Conscience fund.....	.....	.....	.....	.....	.....
Miscellaneous.....	25.06	.....	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents.....	2,343.21	3,219.92	3,577.82	2,189.92	3,643.77
Salaries and fees, home and branch office.....	4,259.81	5,097.38	5,374.94	3,940.19	7,434.99
Printing and stationery.....	541.76	618.93	611.95	644.17	1,124.73
Postage and exchange.....	648.79	685.07	685.39	484.30	831.91
Inspections and surveys.....	100.76	210.01	457.59	60.83	145.68
Federal taxes.....	35.73	174.25	695.17	537.22	436.48
State and other taxes.....	3,304.10	3,481.33	4,257.75	3,181.41	5,231.78
Fire department taxes.....	778.75	1,126.63	708.51	605.47	1,020.36
Expense of adjustment of losses.....	1,289.26	1,445.03	1,666.94	1,367.95	1,916.42
Rents.....	720.40	870.71	887.29	505.55	850.12
Advertising.....	109.27	111.50	73.09	73.84	110.92
Legal expenses.....	52.88	89.08	148.24	73.20	76.82
Furniture and fixtures.....	104.72	127.14	35.65	186.62	342.89
Maps.....	315.10	329.16	319.68	177.52	290.22
Underwriting boards.....	1,208.02	1,716.82	1,485.70	1,435.70	2,910.78
Allowance to local agents, miscellaneous expenses....	249.83	418.35	115.75	71.36	148.85
Repairs and expenses (not taxes) on real estate.....	1,193.25	1,370.03	1,611.28	1,254.96	1,761.45

EXHIBIT NO. 35b.

FIDELITY-PHENIX FIRE INSURANCE COMPANY OF NEW YORK.

September 13, 1918.

Messrs. Waterworth & Hess, Managers,
Pierce Building,
St. Louis, Missouri.

Gentlemen:

Mr. Dugan writes me regarding the demand made by the Attorney General of Missouri in connection with companies' expenses, desiring to know about officers' salaries, etc.

As you know, this company, the Continental and American Eagle are jointly associated in the Pacific Coast Department under the management of a Secretary and an Assistant Secretary, whose salaries would not need to be taken into consideration in an inquiry of this kind if they were called General Agent and Assistant General Agent.

The companies have separate offices in Chicago and it is freely admitted that my salary and that of Secretary Thomas are charged entirely to the Fidelity-Phenix, though we in turn are discharging the duties of General Agent and Assistant General Agent only.

At New York all three companies are in one office and the expense is to a large extent joint.

I cannot give you any of the individual salaries as that would be highly improper, but the proportion of all official salaries, even including those people acting in the capacity of General Agents, chargeable to the Fidelity-Phenix do not exceed $100,000 per annum.

Our premium receipts last year were $9,625,000 net, of which $362,000 net came from the State of Missouri. Under such circumstances you will see that slightly less than 4% of the official salary roll of the company would be chargeable to the State of Missouri and this at the outside would be $4,000.

All this is included in our general charge for overhead expenses.

Yours very truly,
C. R. STREET,
Vice-President.

EXHIBIT FIDELITY-PHENIX INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks.	$27,629.74	$24,811.03	$28,914.84	$35,114.28	$43,947.85
Interest on deposits.....	1,171.58	1,717.06	1,618.78	1,363.62	2,912.65
Interest on bills receivable...	79.64	.....	.....	35.65	58.55
Interest from all other sources	62.61	129.10	129.42	88.83	123.45
Gross rents from company property.....	1,435.51	1,304.38	1,304.46	1,290.58	1,488.45
Premiums on perpetual risks.	.....	.....	.....	.....	.....
Conscience fund.....	.....	.....	.....	.....	.....
Miscellaneous.....	390.48	.....	.....	.....	.....
Disbursements:					
Salaries and expenses, special and general agents.....	12,283.38	11,184.14	10,863.67	11,404.73	12,831.40
Salaries and fees, home and branch office.....	17,684.01	18,965.58	18,631.26	20,746.05	25,876.80
Printing and stationery.....	1,702.93	1,982.29	2,276.68	2,932.09	4,351.55
Postage and exchange.....	2,031.32	2,104.61	2,143.48	2,737.23	3,083.40
Inspections and surveys.....	566.01	590.79	780.57	1,316.57	1,549.55
Federal taxes.....	110.47	350.55	2,094.21	1,806.70	1,872.95
State and other taxes.....	7,530.37	8,018.38	8,872.06	9,260.67	10,004.85
Fire department and taxes...	1,307.54	1,273.54	1,257.84	1,090.15	1,364.60
Expenses of adjustment of losses.....	4,464.30	4,962.58	4,839.93	4,938.56	5,641.75
Rents.....	2,771.82	2,871.88	3,152.61	2,885.67	3,265.70
Advertising.....	1,234.62	1,167.54	1,289.65	1,170.06	2,868.00
Legal expenses.....	54.78	253.04	104.94	33.90	20.10
Furniture and fixtures.....	266.81	258.37	313.92	526.93	649.05
Maps.....	1,015.49	1,095.60	1,007.41	917.10	905.90
Underwriters boards.....	3,313.54	3,469.88	3,953.88	4,460.02	5,940.90
Allowance to local agents, miscellaneous expenses....	51.30	60.54	.....	66.75	124.10
Repairs and expenses (not taxes) on real estate.....	220.63	178.99	178.29	.....	342.15

EXHIBIT NO. 35c.

SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY.

Chicago, September 16, 1918.

Messrs. Waterworth & Hess, Mgrs.,
Missouri Inspection Bureau,
St. Louis, Mo.

Gentlemen:—

In reply to your letter of 11th inst., we beg to state that in our report to the Missouri Insurance Department entitled "Underwriting Experience by Classes for 1915, 1916 and 1917" the following items of income and outgo were figured pro rata for Missouri in proportion that the Missouri premiums bear to total premiums. These items are as follows:

"Interest earned on unearned premiums on Missouri business.

"Interest earned on capital stock and surplus pro rata for Missouri.

"Proportion of Home and Departmental expenses (not included in any of above) subdivided into underwriting expenses and investment expenses."

Trusting this will answer your purpose, we remain,

Yours very truly,
A. F. DEAN,
Manager.

EXHIBIT SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY.

Analysis of Income and Disbursements for Missouri other than Premiums and Losses and Commissions.

	1913	1914	1915	1916	1917
Earnings:					
Interest on bonds and stocks	$11,668.61	$11,893.92	$12,027.76	$13,700.56	$19,375.69
Interest on deposits	368.02	476.04	603.92	983.52	1,074.87
Interest on bills receivable	.....	.92	.....	.....	5.40
Interest from all other sources	2,874.16	3,779.28	3,904.64	4,966.02	6,184.03
Gross rents from company property	630.00	720.00	720.00	810.00	972.00
Premiums on perpetual risks	.....	.....	.....	.....	.....
Conscience fund	.....	.....	.....	.....	.....
Miscellaneous	365.78	716.96	.....	.....	.....
Disbursements:					
Salaries and expenses special and general agents	11,518.43	13,639.80	14,272.04	16,505.23	20,042.53
Salaries and fees home and branch office	11,638.02	13,736.96	14,195.48	16,778.30	22,040.37
Printing and stationery	1,938.58	2,030.44	2,619.72	3,095.10	4,071.82
Postage and exchange	991.93	978.88	1,131.72	1,292.49	1,700.95
Inspections and surveys	1,374.45	1,734.24	1,924.44	2,361.06	3,244.48
Federal taxes	118.12	352.92	1,451.28	1,211.62	829.60
State and other taxes	5,608.12	7,560.36	7,786.56	8,263.30	11,451.67
Fire department and taxes	1,112.82	1,210.72	1,416.84	1,701.81	2,095.74
Expense of adjustment of losses	1,685.60	2,162.48	2,333.12	2,834.64	3,451.36
Rents	1,238.54	1,413.60	1,420.16	1,611.18	1,946.16
Advertising	847.63	816.12	725.72	973.44	932.04
Legal expenses	313.11	291.76	492.16	582.66	662.15
Furniture and fixtures	255.11	172.28	268.32	338.08	290.84
Maps	622.86	630.84	589.04	572.80	109.08
Underwriters boards	1,997.73	2,561.92	2,602.68	3,369.37	3,958.85
Allowance to local agents, miscellaneous expenses	794.60	1,057.08	1,304.00	1,833.37	1,864.78
Repairs and expenses (not tax) on real estate	208.14	21.80	45.64	55.98	154.06

EXHIBIT NO. 38.

MISSOURI—FIRE COMPANIES EXPERIENCE—FIVE YEARS, 1913-1917—INSPECTION BUREAU AND INSURANCE DEPARTMENT FIGURES.

INSPECTION BUREAU (All Classes)	Net Premiums Received	Interest on Unearned Premiums	Interest on Capital Stock and Surplus	Total Premium and Interest on Unearned Premium	Net Losses Paid	Expenses
1913	$10,318,086	$350,815 (3.4%)	$433,360 (4.2%)	$10,668,901	$7,683,545	$4,189,143 (40.6%)
1914	10,495,558	356,849 (3.4%)	440,813 (4.2%)	50,852,407	6,404,067	4,261,197 (40.6%)
1915	8,899,567	289,676	400,802	9,189,243	5,699,252	3,771,254
1916	9,934,363	320,290	425,826	10,254,653	5,527,525	4,053,167
1917	11,682,039	414,853	460,612	12,096,892	7,067,345	4,559,488
Five years, 1913-7 Totals	$51,329,613	$1,732,483	$2,161,413	$53,062,096	$32,382,734	$20,834,249
Five years, 1913-7 Average	$10,265,923	$346,497	$432,283	$10,612,419	$6,476,547	$4,166,850
Three years, 1915-7 Totals	30,515,969	1,024,819	1,287,240	31,540,788	18,294,122	12,383,909
Three years, 1915-7 Average	10,171,990	341,606	429,080	10,513,596	6,098,041	4,127,970

	Total Premium and All Interest		
1913	$ 11,102,261		
1914	11,293,220		
1915	9,590,045		
1916	10,680,479		
1917	12,557,504		
Five years, 1913-7 Totals	$55,223,509		
Five years, 1913-7 Average	$11,044,702		
Three years, 1915-7 Totals	32,828,028		
Three years, 1915-7 Average	10,942,676		

INSURANCE DEPARTMENT (Mr. McGee)			Earnings Other Than Premium and Interest on Unearned Premium			
1913	$8,125,891	$276,280 (3.4%)	$358,898	$8,402,171	$6,249,518	$3,331,566
1914	8,831,440	300,269 (3.4%)	437,653	9,131,709	5,782,417	3,620,852
1915	8,540,290	275,573	379,710	8,815,863	5,383,511	3,610,163
1916	9,743,602	314,913	419,580	10,058,515	5,357,383	3,974,667
1917	11,599,192	411,087	441,030	12,010,279	7,018,483	4,530,258
Five years, 1913-7 Totals	$46,840,415	$1,578,122	$2,036,871	$48,418,537	$29,791,312	$19,067,476
Five years, 1913-7 Average	9,368,083	315,624	407,374	9,683,707	5,958,262	3,813,495
Three years, 1915-7 Totals	29,883,084	1,001,573	1,240,320	30,884,657	17,759,377	12,115,058
Three years, 1915-7 Average	9,961,027	333,858	413,440	10,294,885	5,919,792	4,038,353

	Total Premium and All Earnings		
1913	$8,761,069		
1914	9,569,362		
1915	9,195,573		
1916	10,478,095		
1917	12,451,309		
Five years, 1913-7 Totals	$50,455,408		
Five years, 1913-7 Average	$10,091,082		
Three years, 1915-7 Totals	32,124,977		
Three years, 1915-7 Average	10,708,326		

737

121

3654

INSPECTION BUREAU (All Classes)	Total Losses and Expenses	Underwriting Exhibit Premiums vs. Losses and Expenses Profit +, Loss −		Underwriting Plus Interest on Unearned Premiums Profit +, Loss −		5% Conflagration Charge Added to Profit or Loss on Underwriting Plus Interest on Unearned Premiums (Per cent of Premiums)
		Amount	Per cent of Premiums	Amount	Per cent of Premiums	
1913	$11,872,688	− $1,554,602	−15.1%	− $1,203,787	−11.7%	−16.7%
1914	10,665,264	− 169,706	− 1.6%	+ 187,143	+ 1.8%	− 3.2%
1915	9,470,506	− 570,939	− 6.4%	− 281,263	− 3.2%	− 8.2%
1916	9,580,692	+ 353,671	+ 3.6%	+ 673,961	+ 6.8%	+ 1.8%
1917	11,626,833	+ 55,206	+ 0.5%	+ 470,059	+ 4.0%	− 1.0%
Five years, 1913-7 Totals	$53,215,983	− $1,886,370	− 3.7%	− $153,887	− 0.3%	− 5.3%
Five years, 1913-7 Average	$10,643,197	− $377,274	− 3.7%	− $30,777	− 0.3%	− 5.3%
Three years, 1915-7 Totals	30,678,031	− 162,062	− 0.5%	+ 862,757	+ 2.8%	− 2.2%
Three years, 1915-7 Average	10,226,010	− 54,021	− 0.5%	+ 287,586	+ 2 8%	− 2.2%

		Profit (+) or Loss (−) including interest				5% Conflagration Charge Added
		Amount	Per cent of Premiums			
1913	.....	− $770,427	− 7.5%	.....	.....	−12.5%
1914	.....	+ 627,956	+ 6.0%	.....	.....	+ 1.0%
1915	.....	+ 119,539	+ 1.3%	.....	.....	− 3.7%
1916	.....	+ 1,099,787	+11.1%	.....	.....	+ 6.1%
1917	.....	+ 930,671	+ 8.0%	.....	.....	+ 3.0%
Five years, 1913-7 Totals	.....	+ $2,007,526	+ 3.9%	.....	.....	− 1.1%
Five years, 1913-7 Average	.....	+ $401,505	+ 3.9%	.....	.....	− 1.1%
Three years, 1915-7 Totals	.....	+ 2,149,997	+ 7.0%	.....	.....	+ 2.0%
Three years, 1915-7 Average	.....	+ 716,666	+ 7.0%	.....	.....	+ 2.0%
INSURANCE DEPARTMENT (Mr. McGee)						
1913	$9,581,084	− $1,455,193	−17.9%	−$1,178,913	−14.5%	−19.5%
1914	9,403,269	− 571,829	− 6.5%	− 271,560	− 3.1%	− 8.1%
1915	8,993,674	− 453,384	− 5.3%	− 177,811	− 2.1%	− 7.1%
1916	9,332,020	+ 411,582	+ 4.2%	+ 726,495	+ 7.5%	+ 2.5%
1917	11,548,741	+ 50,451	+ 0.4%	+ 461,538	+ 4.0%	− 1.0%
Five years, 1913-7 Totals	$48,858,788	− $2,018,373	− 4.3%	− $440,251	− 0.9%	− 5.9%
Five years, 1913-7 Average	$9,771,758	− $403,675	− 4.3%	$88,050	− 0.9%	− 5.9%
Three years, 1915-7 Totals	29,874,435	+ 8,649	0.0%	+ 1,010,222	+ 3.4%	− 1.6%
Three years, 1915-7 Average	9,958,145	+ 2,882	0.0%	+ 336,740	+ 3.4%	− 1.6%

Profit + Loss −

9656

		Profit (+) or Loss (−) Including all Earnings.				5% Conflagration Charge Added
		Amount	Per cent of Premiums			
1913		− $820,015	−10.1%			−15.1%
1914		+ 166,093	+ 1.9%			− 3.1%
1915		+ 201,899	+ 2.4%			− 2.6%
1916		+ 1,146,075	+11.8%			+ 6.8%
1917		+ 902,568	+ 7.8%			+ 2.8%
Five years, 1913-7 Totals		+ $1,596,620	+ 3.4%			− 1.6%
Five years, 1913-7 Average		+ 319,340	+ 3.4%			− 1.6%
Three years, 1915–7 Totals		+ 2,250,542	+ 7.5%			+ 2.5%
Three years, 1915–7 Average		+ 750,181	+ 7.5%			+ 2.5%

EXHIBIT NO. 39.

SUMMARY OF COMPARISON OF MISSOURI EXPERIENCE—FIVE YEARS, 1913-7—ALL CLASSES.

WITHOUT 5% CONFLAGRATION CHARGE		UNDERWRITING ONLY.				
		Insurance Department.				Inspection Bureau.
		Capital Stock and Surplus.	Premiums.	Per cent. of Capital Stock and Surplus.	Per Cent. of Premiums.	Per Cent. of Premiums.
1913		$7,665,907	$8,125,891	−19.0%	−17.9%	−15.1%
1914		7,695,781	8,831,440	− 7.4%	− 6.5%	− 1.6%
1915		7,261,494	8,540,290	− 6.2%	− 5.3%	− 6.4%
1916		8,213,772	9,743,602	+ 5.0%	+ 4.2%	+ 3.6%
1917		7,918,940	11,599,192	+ 0.6%	+ 0.4%	+ 0.5%
Five years, 1913-7	Total	$38,755,894	$46,840,415	− 5.2%	− 4.3%	− 3.7%
	Average	$7,751,179	$9,368,083	− 5.2%	− 4.3%	− 3.7%
Three years, 1915-7	Total	23,394,206	29,883,084	0.0%	0.0%	− 0.5%
	Average	7,798,069	9,961,027	0.0%	0.0%	− 0.5%

Profit + Loss −

SUMMARY OF COMPARISON OF MISSOURI EXPERIENCE—FIVE YEARS, 1913-7—ALL CLASSES—Continued.

WITHOUT 5% CONFLAGRATION CHARGE.	UNDERWRITING ONLY.				
	Insurance Department.				Inspection Bureau.
	Capital Stock and Surplus.	Premiums.	Per cent. of Capital Stock and Surplus.	Per cent. of Premiums.	Per cent. of Premiums.
5% CONFLAGRATION CHARGE ADDED TO ABOVE PERCENTAGES					
1913				−22.9%	−20.1%
1914				−11.5%	− 6.6%
1915				−10.3%	−11.4%
1916				− 0.8%	− 1.4%
1917				− 4.6%	− 4.5%
Five years, 1913-7 — Total				− 9.3%	− 8.7%
Five years, 1913-7 — Average				− 9.3%	− 8.7%
Three years, 1915-7 — Total				− 5.0%	− 5.5%
Three years, 1915-7 — Average				− 5.0%	5.5%

WITHOUT 5% CONFLAGRATION CHARGE	Underwriting Plus Interest on Unearned Premiums.			Underwriting Plus All Earnings (Including Interest on Capital Stock and Surplus.)		
	Insurance Dept.		Insp. Bureau.	Insurance Dept.		Insp. Bureau.
	Percent of Capital Stock and Surplus.	Percent of Premiums.	Percent of Premiums.	Percent of Capital Stock and Surplus.	Percent of Premiums.	Percent of Premiums.
13	−15.4%	{−14.5%}	−11.7%	−10.7%	−10.1%	− 7.5%
1914	− 3.5%	{− 3.1%}	+ 1.8%	+ 2.1%	+ 1.9%	+ 6.0%
1915	− 2.4%	− 2.1%	− 3.2%	+ 2.8%	+ 2.4%	+ 1.3%
1916	+ 8.8%	+ 7.5%	+ 6.8%	+13.9%	+11.8%	+11.1%
1917	+ 5.8%	+ 4.0%	+ 4.0%	+11.4%	+ 7.8%	+ 8.0%
Five years, 1913-7 Total	− 1.1%	{− 0.9%}	− 0.3%	+ 3.9%	+ 3.4%	+ 3.9%
Five years, 1913-7 Average	− 1.1%	{− 0.9%}	− 0.3%	+ 3.9%	+ 3.4%	+ 3.9%
Three years, 1913-17 Total	+ 4.3%	+ 3.4%	+ 2.8%	+ 9.4%	+ 7.5%	+ 7.0%
Three years, 1913-17 Average	+ 4.3%	+ 3.4%	+ 2.8%	+ 9.4%	+ 7.5%	+ 7.0%

Profit + Loss −

3660

5% CONFLAGRATION CHARGE ADDED TO ABOVE PERCENTAGES							
1913			−19.5%	−16.7%		−15.1%	−12.5%
1914			− 8.1%	− 3.2%		− 3.1%	+ 1.0%
1915			− 7.1%	− 8.2%		− 2.6%	− 3.7%
1916			+ 2.5%	+ 1.8%		+ 6.8%	+ 6.1%
1917			− 1.0%	− 1.0%		+ 2.8%	+ 3.0%
Five years, 1913-7	Total		− 5.9%	− 5.3%		− 1.6%	− 1.1%
	Average		− 5.9%	− 5.3%		− 1.6%	− 1.1%
Three years, 1915-7	Total		− 1.6%	− 2.2%		+ 2.5%	+ 2.0%
	Average		− 1.6%	− 2.2%		+ 2.5%	+ 2.0%

Profit +; Loss −.

the banking department; or, at least, the evidence does not show that there is any separation in figuring the expense, and the same capital and surplus is used in both departments.

The referee finds, therefore, that the profits of the banking business of the insurance companies are properly taken into consideration in determining the earnings of the companies, and, therefore, in determining the rates properly to be charged.

(Here follow Exhibits marked side folios pages 3538-3661.)

[fol. 3661½] Clerk's certificate to Volume 4 omitted in printing.

[fol. 3662] A. L. HARTY was thereupon called as a witness on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Barker:

Q. Your name is A. L. Harty?
A. Yes, sir.
Q. Where do you live, Mr. Harty?
A. Cape Girardeau, Missouri.
Q. What is your business at Cape Girardeau?
A. Banking business, principally.
Q. What is the name of your company?
A. Southeast Missouri Trust Company.
Q. What position do you hold with that company?
A. Pesident.
Q. How long have you been in that position?
A. About four years.
Q. Prior to that time what was your business, Mr. Harty?
A. I was treasurer of the International Life Insurance Company of St. Louis.
[fol. 3663] Q. Prior to that what was your business?
A. Superintendent of Insurance of Missouri.
Q. How long were you Superintendent of the Insurance Department of Missouri?
A. On the first day of May, 1918, until the first—until the 5th day of October, 1921.

Q. You were the Superintendent of the Insurance Department when the surcharge case was tried, State of Missouri ex rel. versus Harty, were you?

A. Yes, sir.

Q. Now, at the time you were Superintendent of the Insurance Department of Missouri, Mr. Harty, what regular reports did the fire stock insurance companies doing business in Missouri file with your department?

A. First the annual statement, the tax statement, and a statement which we knew as the underwriting statement.

Q. On what basis were those three reports and all of them filed with your department as to Missouri business with reference to premiums?

Mr. Hogsett: We object to that for the reason that the reports are in evidence and they speak for themselves and they are the best evidence.

Mr. Barker: They do. This is merely preliminary.

The Referee: I think that objection should be sustained.

Mr. Barker: What is that?

The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by its counsel, then and there at the time duly excepted, and still excepts.)

[fol. 3664] Q. During the time that you were Superintendent of the Insurance Department, what was the method of your department in arriving at an underwriting profit or loss of companies doing business in Missouri?

Mr. Folonie: Object. We make the same objection to this question as made to the last preceding question.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted and still except.)

A. Upon the written—or upon the writen premium basis was the interpretation of the rating law.

Mr. Folonie: The latter part of that we move be stricken out as a conclusion and not responsive to the question.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Did you have sufficient data from the reports as filed by the Insurance Department—by the insurance companies with your department to figure underwriting profit or loss on the earned premium basis?

Mr. Hogsett: We object to that for the reason it calls for the conclusion of the witness, and for the further reason that the witness has not yet been shown to be qualified to answer the question and in aid of that I would like to ask the witness a question or two.

The Referee: Proceed.

[fol. 3665] Mr. Hogsett: Q. Mr. Harty, previous to your appointment as Superintendent of Insurance, what had been your experience in the insurance business?

A. I had had no previous experience as an insurance man before my appointment as superintendent except in relation to and as a representative of fire insurance companies as an agent.

Mr. Hogsett: Q. Local agent?

A. Yes.

Mr. Hogsett: Q. That is to say, you had been the agent of a number of companies at your home town or Cape Girardeau?

A. No, at Bloomfield, Missouri.

Mr. Hogsett: Q. At your home town, at least?

A. Yes.

Mr. Hogsett: Q. And your experience had been limited simply to the duties and functions of a local agent of the companies that you represented, is that correct?

A. In the insurance business.

Mr. Hogsett: Q. Yes, sir. And you had never had any experience previous to your appointment, then, I take it, in the matter of figuring or calculating underwriting profit or loss of insurance companies as a whole in a given state?

A. No, sir.

Mr. Hogsett: Now, we insist on the objection.

The Referee: Q. How long were you acting as Superintendent of Insurance, Mr. Harty?

A. About three and a half years.

The Referee: Q. During that time were you or not actively engaged in the affairs of the office?

A. I was.

[fol. 3666] Q. Did your official position bring you in contact frequently with the fire stock insurance companies doing business in this state at that time?

A. Yes, sir.

Q. Did you make any study or investigation of the business?

A. All the members of our department or at least the heads of the department, made a study of the propositions which come before the department in reference to fire insurance companies and all other companies, and especially so during the time of the case known as the surcharge case.

The Referee: Q. Including yourself?

A. Yes, sir.

The Referee: Objection overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

(Whereupon the pending question was read by the reporter as follows: "Q. Did you have sufficient data from the reports as filed by the Insurance Department—by the insurance companies with your department to figure underwriting profit or loss on an earned premium basis?")

A. We did not.

Mr. Barker: That is all, Mr. Folonie.

Mr. Folonie: That is all with this witness.

(Witness excused.)

[fol. 3667] E. G. McGee, recalled as a witness on behalf of the defendant, having been previously duly sworn, was examined and testified as follows:

Direct examination by Mr. Barker:

Q. Mr. McGee, prior to the passage of the rating act in 1915, what reports, general reports, did the insurance companies make to the Missouri Insurance Department?

Mr. Hogsett: Objected to as repetition.

Mr. Folonie: On the ground he has answered that in detail.

Mr. Hogsett: And that the reports themselves are in evidence.

Mr. Barker: He has never been asked that question bebefore.

The Referee: Are the reports in evidence?

Mr. Barker: They are not in evidence. This is prior.

Mr. Hogsett: He may be right about that. I did not understand that. Withdraw the objection.

The Referee: Objection, then, withdrawn?

Mr. Hogsett: Yes, sir.

Mr. Folonie: Our sole objection is to that, immaterial to any inquiry, as to matters preceding the suit.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

[fol. 3668] A. They filed an annual statement and tax return schedule.

Mr. Barker: Now, after the passage of the rating act, what reports did they file?

Mr. Hogsett: Now, that has been covered and is objected to as repetition.

Mr. Barker: Covered by witness Revelle, and I want to support it, that is all. That is the only witness that testified to it.

Mr. Hogsett: No, this witness discussed that and the blanks are in evidence.

Mr. Barker: Our purpose is to show that the underwriting report by classes came into existence solely and exclusively after the passage of the rating act.

Mr. Folonie: Well, that is a fact, and we will admit that, and no further evidence need be produced to prove that fact.

Mr. Barker: Very well.

Mr. Folonie: Of course, we object to the materiality of the fact, but we admit it and admit the fact exists.

Mr. Barker: In other words, Mr. McGee, what you mean is that after the passage of the rating act, the underwriting report by classes for Missouri business was first adopted in this state?

A. Yes, sir.

Mr. Folonie: We object to pursuing it after it has been completely covered by an admission; complete waste of time.

[fol. 3669] The Referee: That has been admitted, has it not?

Mr. Barker: I thought I would get it clear. He answered it yes and I guess it won't hurt to let one "yes" stand.

Q. Now, prior to the passage of the rating act in 1915, the annual statement in reporting Missouri business was on what premium basis?

A. On the written premium basis; or premiums received.

Q. And the tax statement prior to that time on what basis?

A. Net premiums received.

Q. Since you have been a member of the department, Mr. McGee, has there ever been a general report filed by the stock fire companies doing business in Missouri as to Missouri business on any basis other than the written premium basis?

A. No, sir.

Q. During the time that you have been a member of this department, and particularly since the rating act of 1915, have you ever had sufficient data from the fire insurance companies in the way of their reports that would enable the Missouri Insurance Department to figure underwriting profit or loss on what they call an earned premium basis?

Mr. Folonie: We object, if the court please, upon the ground that the blanks required by the Insurance Department are upon forms which it is already proven and admitted were prepared by the Insurance Department of the State of Missouri, and whether they are adequate or inadequate for the purpose of computations on their part is [fol. 3670] an entirely immaterial issue herein and from which no conclusions favorable to the plaintiff could in any wise be drawn if true and we therefore object.

Mr. Hogsett: At the basis of this particular phase of this lawsuit is the legal question which this court will have to decide, as to whether the law itself means that profits or earnings are to be calculated upon a written basis or an earned basis. Now, what light does it shed whether the department in preparing blanks that it may ask the companies to return has correctly drawn them or not? It is for the court to determine that legal question, and whether they have drawn the right kind of blanks or not to draw out that information is an immaterial fact in the case. Suppose they had drawn no blanks at all, could that destroy Your Honor's construction of the law if you construed it to mean that profit is to be calculated upon an earned basis? Could the fact that they had not asked for that information requisite to calculate profit on that basis be material?

Mr. Folonie: Suppose they couldn't calculate it on any information they had, would it still destroy the right to prove what in fact the experience is, simply because they don't have it?

Mr. Hogsett: And to use a homely illustration the defendant is attempting to lift itself by its foot straps. That is the net result of it. It is a legal question whether or not it means one thing or another. Now, they are offering evidence here undertaking to show that they interpreted it to mean a given thing and draw their blanks on that theory. [fol. 3671] How can that affect the question which is a question of law as to what the statute means? It seems to me that this whole class of evidence is wholly afield.

Mr. Barker: I would like to be heard on this. The gentleman overlooked this purpose in it: That the blanks prepared by the Missouri Insurance Department after the passage of the rating act, the underwriting report solely as to Missouri business shows in the first place the interpretation which the state has fixed upon that act—for the reason it has taken here. Second, it shows that for years these same plaintiffs have filed that blank and returned it in the form requested by the state——

Mr. Hogsett (interrupting): We have to do it.

Mr. Barker (continuing): And it shows an agreement—the nature of an agreement and an adoption of the state's theory of the insurance companies, and it is offered for both purposes.

Mr. Hogsett: You say it shows an agreement?

Mr. Barker: An adoption of our theory.

Mr. Hogsett: We have to do that.

Mr. Barker: You fill out blanks on a written basis and only on a written basis for years, and then when you try a lawsuit, you suddenly shift to an earned premium basis; which no reports have been filed with the department on that basis. It shows they have changed the position that they used with the department for many years.

[fol. 3672] Mr. Folonie: Well, that just isn't so.

Mr. Hogsett: We just fill out the blanks he sends to us.

The Referee: I think the referee understands the situation with reference to the duty of the insurance companies to fill out the blanks, just as the referee understands they are prepared by the department. I don't think I am misled in that connection. However, the objection will be overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker: Read the question.

(Question read by the reporter, as follows: "Q. During the time that you have been a member of this department, and particularly since the rating act of 1915, have you ever had sufficient data from the fire insurance companies in the way of their reports that would enable the Missouri Insurance Department to figure underwriting profit or loss on what they call an earned premium basis?"

A. No, sir, we have not.

Mr. Folonie: If the referee understands it, it doesn't make any difference whether we understand it or not.

Mr. Barker:

Q. Now, Mr. McGee, is there any difference in maintaining a reserve under either the written premium basis or the earned premium basis?

Mr. Folonie: Will you read that question, Mr. Blume? I should have gotten it, but I didn't.

[fol. 3673] (Question read by the reporter.)

Mr. Folonie: We object on the ground that it is a repetition; what he testified at the former hearing.

Mr. Barker: That was not asked.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. What was your answer?

A. No, sir, there would be no difference. The same reserve would be maintained anyway.

Q. Now, Mr. McGee, considering for a moment the unearned reserve, suppose a loss occurs in 1924, is that loss charged to the year in which it was written, assuming it was written, for instance, in 1920, or is it charged against the premium income of the year in which the loss occurs?

Mr. Hogsett: That identical question was asked him and answered.

The Referee: I am under the impression that has been covered. Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. It would be charged in 1924, the year in which the loss occurred.

Mr. Barker:

Q. Now, Mr. McGee, have you a table showing the increase in the unearned premium reserve for a period of say twenty to twenty-five years throughout the United States? [fol. 3674] A. I haven't one that I have made up, no. Not showing the increase in the unearned premium reserve.

Q. Have you Mr. Richards' compilations of the figures from the New York Insurance Department showing the increase in the earned and unearned premium reserve since 1920?

A. No, it shows the increase in the premiums received and there would be a corresponding increase in the unearned premium reserve, of course.

Q. From your investigation, Mr. McGee, has there been a steady and a certain increase in the premiums received since, for instance, 1920 up to the present time—1900?

A. There has been a steady increase with the exception of possibly one or two years during that twenty years. Premiums increasing from something like 155 or 60 million dollars in 1901 up to something over 600,000,000 in 1920.

(Whereupon a recess of five minutes was taken after which the following proceedings were had:)

Mr. Barker: I think that is all with Mr. McGee.

Mr. Folonie: I wish to interrogate the witness about a matter on which he was interrogated at his previous hearing, which I omitted at that time.

The Referee: Proceed.

Cross-examination by Mr. Folonie:

Q. Mr. McGee, in the computations which you gave us here at our former sitting respecting capital, the combined capital of the various companies in the business, what did [fol. 3675] you take as the capital of the companies foreign to the United States, such as the Royal Insurance Company, for example?

A. Their deposited capital. That is all the capital that they——

Q. (Interrupting.) You mean the $200,000 deposited in the State of New York?

A. In some cases $200,000 and in some of those deposits, if I remember right, run up as high as $600,000. The most of them, however, being $200,000.

Q. It is the amount deposited in the United States by department requirements in some states, principally New York, as a substitute for capital?

A. Yes.

Q. It is not representative, however, of the entire capital of those foreign companies?

A. Certainly. They make no report of that capital.

Q. And in your figures as the capital computations for such companies as the Home Insurance Company, for example, which does business in virtually all the civilized countries in the world, did you pro rate a portion of their entire capital as United States capital or take their entire capital?

A. Took their entire capital.

Q. So that if the Home Insurance Company did business in Australia, and England and France and Canada, and Cuba, and the United States, you nevertheless took their entire capital?

A. It would make no difference in the world where they did their business, that Missouri business was a certain percentage of the total business wherever it was done.

Q. But you took that proportion of the business which Missouri business bore to the United States business of that particular company?

A. Presumed to be their entire business.

[fol. 3676] Q. For the United States?

A. I suppose that is the United States.

Q. And you took that proportion of their entire capital?

A. I don't know that those companies do business in foreign countries; they may or may not.

Q. Well, for your information, it has been testified in this case that some of them, I think the Home was mentioned specifically, does do business in virtually all the *companies* of the civilized world, but you did not allocate and take part of their capital as the United States capital in any event?

A. Yes, sir, I did.

Q. I say, you didn't allocate a part of their capital for the entire world and take part of it as the United States capital?

A. I don't catch just what you mean.

Q. Well, you took their entire capital wherever they were doing business in combining the capital of all companies, did you?

A. For instance, we will say in 1915 or 1917, the beginning of the term, they had a six million dollar capital. That was the capital used.

Q. You took their entire capital?

A. Yes, sir.

Q. Wherever used?

A. Yes.

Mr. Folonie: That is all.

Mr. Barker: That is all.

(Witness excused.)

Mr. Barker: Judge Revelle, will you take the stand again, please?

[fol. 3677] CHARLES G. REVELLE, recalled to the stand for further direct examination in behalf of the defendant, testified further as follows:

Direct examination by Mr. Barker:

Q. Judge Revelle, you have testified as to the ruling of your department while you were connected with the Insurance Department of Missouri?

Mr. Folonie: No, he has not testified to any ruling.
Mr. Barker: As to his interpretation.
Mr. Folonie: Yes.

Mr. Barker:

Q. Will you please give me your idea, aside from the interpretation of your department, as to the proper basis for figuring underwriting profit or loss on Missouri business, whether on the written premium basis or the earned premium basis?

Mr. Folonie: Object to it as incompetent, as the witness has not been qualified.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. Why, Mr. Barker, I felt at the time that our law was passed, at the time that we interpreted as we did, and I still feel from my experience, that the business, and my observation of it, that the written basis, or what I call the premium received basis, is in view of the manner in which the business is conducted and has been conducted, not only the simplest and the most accurate, that is, approaching more nearly an approximation of accuracy, and one that fits [fol. 3678] in more particularly with the present plan of conducting the business than the earned premium basis does.

My idea of it is simply based upon this: that is in view of our rating act, which fixed as a period for fixing rates a

term of five years. As I see it, if the earned premium basis is adopted, it necessitates a change in the practices of the companies in their methods of bookkeeping and would be a misfit with our law for this reason: if I correctly understand the earned premium basis, it is upon the theory that the premiums collected during any given year upon given risks are to be preserved as long as that risk is a risk, and that out of the premiums collected should be paid the losses. That is not or at least was not my experience with the companies as to their method of paying their losses. In other words, as I see it, that if you adopted the earned premium basis and carry it to a logical ending to make it complete, you would have to do this. Say if you have an unearned premium at the end of one period of say ten million dollars, the only justification for carrying that over to another period is that the losses that occur on the property from which those premiums have been received should be paid out of those particular premiums. Now, it is not done that way—or at least it was not done that way. The losses are not charged back to the period during which the premiums are collected. But they are charged to the experiences of the year when the loss occurs.

[fol. 3679] Now, if you carried that to the end, as I see it, that you would have to carry the earned premium basis to make it a complete balance, as a loss occurred you would have to charge that loss back against the year when the premium was collected. You couldn't do that under our rating act. Before you could have a period for which you could fix a rate you would have to let all of the business written during the last year of the period, that you were going to use as a basis for that rate—you would have to let the premium on all of that become earned. That is it would all have to become earned through an expiration of time or it would have to be earned through a destruction of the property. If you were going to charge it against the premiums collected, the losses that occur on that—and were to adopt the earned premium basis to make it complete, you would have to do that.

The Referee: To adopt the unearned premium basis?

A. To adopt the earned premium basis. To carry it to make it a complete plan to carry it to a logical end that you

would have to charge back to the period when the premium was collected the losses that occurred on that risk.

Now, that is not the plan, and as I see it, it would be a very impracticable thing to do. It could not very well be done under our rating act, because if you were going to have a five-year period as a basis for your future rate, then before you would know what the losses against the premiums collected during that period were going to be, you would have to let the period expire, or, that is, the premium [fol. 3680] become earned. Or the property would have to become destroyed and thereby the premium earned, to have a complete experience for that period. That is not practical, as I see it.

Under the present plan, where you carry forward your unearned premium and you pay your losses out of any funds you have and charge your losses not to the period during which the unearned premium is collected but during the period when the loss occurs, you have this result also: You have the result of paying, during the period when the premium is written, all of the acquisition cost of that entire premium. You charge that as against one period, when in reality if you adopted the earned premium basis it ought to be scattered through the whole period—which is not done as I understand it.

My idea of the merits of the written basis is this: That rates should be made in the light of the practical and actual way of conducting the business. And in the way that it is the most convenient, simplest and most economical for the companies. Because that must reflect itself eventually in the rate. They should be made with a view—of course, they have to be made with a view to the future, because it is a rate to govern the future—it should be made in the light of the universal experience of the past that rates under normal conditions, that is, premium receipts during normal conditions are going to increase each year over the preceding year.

My observation and my experience from—my observation from my studies in the department and my experience while [fol. 3681] in the department show that in the absence of some abnormal situation, that experience has been that each year brings an increase—a substantial increase in the premium income to the companies. I think rates ought to

be made in the light of the past experience; and in anticipation of the fact that that is likely to continue because these things have got to be made on what is probable and not what is certain.

The nearest way to get the certainty is to take the past for it. The experience has been, as I say, in the absence of abnormal situations for the receipts of the companies from premiums to increase year after year, and I think that ought to be taken into consideration in fixing the rates.

I think in fixing rates you have got to take into consideration that you are fixing them for companies that are going to be going companies; not companies that are going to cease operations before that rate becomes effective. Or if you are going to fix them for a given period, you have got to fix them on the theory of going companies through that period.

Now, if you do that your received premium basis is, in my opinion, a practical basis, because you do not have to charge back to any other period the losses as they occur.

I think you have got to take into consideration the fact that losses are paid out of current year premiums. And you have got to take into consideration that those premiums [fol. 3682] are going to continue to increase, or at least will be as much as they were in the preceding year and that the current premiums will take care of the losses that occurred on risks that were written before that period.

And if you do that, you simply have a very simple method of computation on the written or the received premium basis. You don't have the spectacle of your charging as against one period all the expense of writing business and then in charging back against that period the losses that occur on that. You can see where there is any difficulty practically in the written basis—difficulties as great as there would be from the company viewpoint itself—as there would be on the earned premium basis unless they completely changed their system of charging losses.

Q. Now, then, Judge Revelle, assuming——

A. (Interrupting.) If you will permit me, I want also to say this, that another thing that influences my judgment on the matter is this: That, of course, the earned premium basis is an inaccurate basis. It is a basis that is just arbitrarily fixed. There isn't — thing while it is—I know it has

been the subject of discussion and controversy as to what portion of the premium should be treated as an unearned portion of the premium—different methods, different bases have from time to time been suggested for that purpose, and after all any basis that are adopted as a basis for figuring the earned premium is an arbitrarily determined basis.

[fol. 3683] My recollection is that experience disclosed while I was observing the business more closely than I am now that the basis which is used now for figuring reserves or unearned premium is always figured with a margin of safety to the public and that in point of fact it does not take the unearned premium that is computed for that purpose to meet the losses.

My observation has been that you can reinsure the business upon which the unearned premium is maintained for from 50 to 65 per cent of that unearned premium.

In other words, there remains in that unearned premium a profit to the company that is maintaining that reserve, a profit of from 35 to 50 per cent. And if that is true then it is not an accurate basis. As I see it any unearned premium basis that will ever be adopted until experiences have been more accurately classified and until tables have become standardized, that any unearned or reserve basis will be one that is merely arbitrarily fixed—approaching as nearly a degree of accuracy as it can, but always allowing a margin of safety. Now, that uncertainty, that uncertain element is not present in your received premium basis.

The Referee: Do I understand you to say, Judge, that in a specific instance a policy is written and a premium we will say of $500 is collected, the policy being for a term of five years, that that may be reinsured in some other solvent company which will assume all of the loss and yet allow the company writing the policy in the first instance to retain a profit of from 35 to 50 per cent of the amount of the premium?

[fol. 3684] A. I don't know, Judge, that that is true on the reinsurance of single risks. I am speaking of the reinsurance of the business of the company as a whole.

The Referee: Well, I was using a single illustration purely for illustrative purposes.

Mr. Folonie: I don't know but what the court may have fallen into error, too, if I may suggest, to avoid confusion here. You spoke of percentage of the premium and I think the witness was speaking of a percentage of the unearned fund. I don't know.

The Referee: Well, I had in mind in the illustration supposed, the reinsurance effected immediately at the beginning of the risk under the original insurance companies.

The Witness: I am not familiar, Judge, with the percentage of the aggregate premium that is required for reinsurance on single risks. I am speaking, though, because I think our rating act contemplates dealing with these things in the aggregate, and when you deal with the unearned premium of the company in the aggregate, as I understand it, you would have to, if you adopted that as a basis of fixing rates, because that is all in the aggregate—that you have a fictitious basis there because in the first place, I say, experience has not been sufficient to enable you to definitely and correctly fix that, and that fact is emphasized or demonstrated by the fact that the business can be reinsured as a whole, not at the amount that they carry on that as an unearned premium, but for considerably less. I merely [fol. 3685] mention that as indicating what I regard as the uncertainty and inaccuracy and the arbitrary character of an earned basis, as distinguished from the basis of a received premium.

And then, I, of course, felt this way—perhaps this is colored to the extent of my having been a department man—that is this thing I am going to mention—I think it is decidedly important to the success of any law where a given official or officials are charged with the enforcement of it, and with the duty of ascertaining experiences and applying those experiences and arriving at a conclusion as to what is just and right—I think the simpler that the system can be, the avoidance of such technical stuff as can be avoided is highly desirable because it is more likely to approximate certainty and fairness rather than when you have too many elements that are difficult to compute.

I say, when you go into your earned premium basis that you have a situation that is decidedly more difficult. I am sure that so far as—if it is the intention of our law to require the companies to file with the Departments such in-

formation as will reasonably enable that Department to fix rates, which it has been my impression that our law did—because that is the only means they have of getting this information—that they would have to devise an entirely different system to the system that was in force at the time our rating act was passed, in order to compute their rates upon an earned premium basis.

Q. Now, Judge, assuming that for a given period like from '17 to '21 in this case, the premium receipts were the same each year?

A. Make no difference.

[fol. 3686] Q. The earned premium basis would make no difference?

A. The earned premium basis would make no difference except these things that I have last mentioned. In practical results it would make no difference. But as I see it, if the state and the companies want to adopt the earned premium basis, then they ought to adopt it in toto; they ought to make it a complete system, and even in that situation, while it won't make any difference in results, yet if that basis is adopted, then losses that occurred during this year on a risk that they are carrying an unearned premium on from say year before last, ought to be charged back against the experiences of that year, and you couldn't do that under our rating act without waiting for three or four years after the period had ended in order to get the experience of that period.

Q. Now, assuming that the business is increasing each year, during the period in question, would that reflect a different condition than if the premiums were decreasing?

A. Decidedly. Or would reflect, of course, this difference: It would show that at the end of the period that you were using for your rate-making basis, it would show a greater unearned premium——

The Referee (interrupting): Than existed at the beginning of the period?

A. Yes. You would take for the beginning of a new period, if your rates—if your income was constantly increasing, you would have at the beginning of the new period a larger unearned premium than you would have had at the beginning of the preceding period. That would necessarily follow.

[fol. 3687] If there was a decrease in the premiums during the preceding period, you would start with a lesser amount of unearned premiums than you had started for the preceding period; and as I see it the lack of fairness—it doesn't matter to me whether it helps or hurts the public or the companies—while experience has shown that the rates are going to continue to increase, yet if they did not do it——

Mr. Folonie (interrupting): You don't mean the rates?

A. I mean the income or the receipts. Yet if you didn't do so, still that does not change my mind as to the soundness of the basis that ought to be adopted, but of course as long as they continue to increase, it will give what I regard as an unfair advantage as against the lower rate. On the other hand, I think, now, the injustice—which is the reverse of the situation—let rates decrease during——

Mr. Barker (interrupting): Income decrease?

The Referee: Results of rates?

A. Yes. Let it decrease, and now from the company viewpoint you would have an experience there, you would be using as a basis for future rates, a period that would not correctly represent the experience of the company during that period, because if they have started in, say, with an unearned premium aggregate of say 20 million dollars, if they decrease at the beginning of the next period, say to 10 million dollars, that means that during that period they have [fol. 3688] suffered losses that would not reflect themselves correctly in that period that you are going to use as a basis for the next period; and the same is true, then, likewise, if you take the other end of it.

Now, if you did do this, if the practice of the company was and if it were practical to do that, to take back the charge as against the preceding period, the period during which you are computing an unearned premium, if you go back and charge the losses that occur subsequent to the period, but on risks that that unearned premium has been maintained on, it would result in a fair basis; but that could not be done and that is not practical under our rating act, because before you would have a period that you could use for a rate-making basis there would be three or four years intervening between the time you were going to use it and the time it would become complete.

Q. Now, Judge, assuming that at the beginning of this period in 1917 there was an unearned premium reserve of substantially 8 million dollars and at the end of the period, January 1, 1921, or December 31, 1921, there was an increase in unearned premiums to 17 million dollars, what profit has a company earned on that unearned premium reserve increasing from 8 million at the beginning to 17 million at the end?

A. Well, I don't know that I would want to be put in the position of saying that that was a profit—I wouldn't be able to compute a profit. I would say that it did not reflect a correct situation as to that period, because now that unearned premium that you start with, 8 million dollars, if [fol. 3689] there is any justification for the earned premium basis it is simply that that is the amount of money that is going to be necessary to meet the losses on the business that you have collected the premium on. Now, if during that period when you are going to use this 8 million dollars for that purpose, if the unearned premium has increased to 17 million dollars, as you say, when you are paying losses now not out of that 8 million dollars but you are paying them out of current-year premiums, you have a situation there that does not in my opinion at all correctly or accurately represent the experience now during that five year period. Because you are disconnecting your premium from your losses, and you are connecting your losses with one year, when you are not giving credit for the premium collected during that year. You are charging, in other words, if you adopt the earned premium basis, you are charging the losses against this year and yet you are not using this year's premium receipts to offset that loss, but you are using another year's receipts for that purpose.

Q. Now, Judge, assuming that this inquiry is from—for the years 1917 to '21 inclusive, and that in January, 1920, there was an increase granted by the department, which of course did not become wholly effective in '20 or '21. In figuring a reasonable rate at the present time would you give consideration to what increased rate would produce in the future, when fully applied?

Mr. Hogsett: If the Court please, we had that question up at the last session and as I recall the ruling of the court you held—and we now urge the same objection—that the

law fixed the guide by which rates are to be determined and [fol. 3690] that it is not a question for the witness to pass on by saying whether he would consider other elements than that described and fixed by the law.

The Referee: Read the question, Mr. Blume, please.

(Question read by the reporter.)

Mr. Hogsett: Now, the point is the statute has said what the company—or rather, the Superintendent of Insurance may consider in arriving at a rate, and that is controlling and all other considerations are foreign.

Mr. Barker: I would like to suggest that Your Honor allowed that evidence to go in by Mr. McGee, and it was offered in the surcharge case, which is a considerable of a guide—that was offered, showing an increase in 1917 and the inquiry was in 1918, and was considered by the commissioner and reported in his finding, and that is authority in this case.

Mr. Hogsett: Mr. Barker refers to the surcharge case as authority. That case did not at all involve this question, at all. My brother on the other side is given at times to the making of wild statements, of which this is one. That surcharge case did not involve this question at all. It was a suit by the companies to compel the Superintendent of Insurance to approve an increase on account of war conditions. This is a suit to review the order of the Superintendent of Insurance compelling a reduction. The statute has fixed the measure or the rule by which that reduction is to be determined. There is no such or analogous provision in the law which related to the granting or the approval, [fol. 3691] rather, by the superintendent, of an increase. Now, that is perfectly apparent. The law itself marks out what we are governed by in this case, and I submit that the opinion of a witness whether he would consider something else is foreign and should not be received.

Mr. Barker: It has already been in evidence all the way through.

The Referee: Well, I don't recall what the ruling may have been, but isn't this true: That whether the standard laid down by the statute is wise or not wise, assuming the statute to be within the power of the general assemblage to pass, we are bound by it? This court is bound by it?

Mr. Folonie: Yes.

The Referee: And any inquiry as to conditions other than those prescribed by the statute would be foreign to the investigation here being held?

Mr. Barker: We had that up and discussed it fully and Your Honor held that that was permissible by other witnesses, and this is simply in corroboration.

Mr. Hogsett: I think Your Honor expressed the same thought that you have right now.

Mr. Barker: He said he had not considered the statute, and I assume he has not yet. He said he would consider it when he got to it. Mr. McGee put it in and put the table in.

The Referee: I don't remember what the ruling may have been then, and I am not particularly concerned about it—it may have been wrong; it may be right or wrong now.

[fol. 3692] Mr. Barker: You announced you would let it in and then consider the statute when you reached it.

The Referee: My recollection of the statute is it lays down certain things which shall be considered for specific purposes. Any inquiry addressed to those things may tend to shed light upon the proper result to be reached. Any inquiry which embraces something other than the things prescribed by the statute does not seem to me could possibly be of evidential value. I am going to permit the witness to answer, simply that the matter may be before us.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

A. That would depend altogether, with me, upon my interpretation of that statute, and would depend further upon the basis that I concluded was the proper basis for considering rates. Now, if the statute is such that it warrants the adoption of the earned premium basis—to do that, we have got to consider things that are going to happen during a period subsequent to the period that you are actually considering. If you are going to adopt the earned basis as the proper basis. To do it, as I see it, you necessarily have got to take into consideration some things that are going to happen during a later period.

In other words, if you start in with an unearned premium of 17 million dollars, you have got to go beyond the period [fol. 3693] when that 17 million dollars was collected, and you have got to look ahead into another period, and say that approximately this many losses are going to take place during that period.

If you are going to close the door on a period and say that the money received and the money paid during that period is the test of the thing, then I think you have got a different situation. If you say that, if you say that the money received and the money paid for losses and expenses during a given period are the sole test of the thing then except to the extent of the increase that was received during that period I don't see how you take it into consideration.

My own idea of rate-making is that you have got to base a rate upon what is probable—what will probably be the situation during the period that the rate is to be effective.

The Referee:

Q. To forecast the future rather than to judge the past?

A. Yes. That the purpose of it is to forecast the future, and you are using the past only as an aid towards forecasting the future.

Mr. Barker: Now, Judge Revelle——

A. (Continuing): If you do that, of course I take it that whatever would seem reasonably certain to come in in the way of some increase that has been allowed at some part of that period would be a proper element of consideration.

Q. Now, Judge, there has been some evidence in the record as to an action, some action between some insurance [fol. 3694] commissioners and the National Board of Fire Under*tak*ers in deciding in favor of what is known as the earned premium basis. Could the earned premium basis be used effectively in Missouri with the present law?

A. Well, as—under my interpretation of it, it seems to me that the adoption of such a basis would result in a good many misfits, and impractical situations.

Q. Under the rating law?

A. Under the rating law; yes, sir.

Q. Those states not having rating laws might be different?

A. Yes, or a rating law could be very easily adjusted to such a basis.

Mr. Barker: I believe that is all, Mr. Folonie.

The Referee: We will adjourn now until two o'clock this afternoon.

(Whereupon an adjournment was taken until 2:00 o'clock in the afternoon of the same day, at which time parties reconvened at the same place and the following proceedings were had:)

Afternoon Session, 2:00 o'clock p. m.

The Referee: Proceed, gentlemen.

Cross-examination by Mr. Folonie:

Q. What is your business or profession Mr. Revelle?

A. I practice law.

Q. And how long have you, with the exception of the time you were insurance superintendent and a justice of the courts in this state, with the exception of that period how [fol. 3695] long have you been engaged in the practice of law?

A. Let's see. I was admitted to the practice in, I think, the latter part of 1900, and excepting for the time that I was on the bench and in the Insurance Department I have never engaged in any line except purely incidental lines to my profession.

Q. And still are so engaged?

A. Still am so engaged, yes.

Q. Do you specialize on any branch of the law, or engage in the general practice?

A. I give—some general practice. I give most of my time now to the service of two life insurance companies; perhaps two-thirds of it. One-third of it, perhaps, to general practice.

Q. Well, in the case in which the abstract of the record has been here produced in evidence, that was known as the surcharge case, wasn't it, in parlance?

A. Yes, sir, correct.

Q. And by surcharge, as the name implies, it had in general in its contemplation the addition of a specific charge to existing rates without affecting the rate structure itself but addiing a specific charge on each policy on account of conditions then existing?

A. That was my understanding of the theory of the surcharge.

Q. And that condition which was then existing arose primarily out of the situation, out of the state of war that existed did it not?

A. That was my understanding, yes,

Q. And on account of the largely increased expenses arising or due to the high cost of building materials and the cost of labor in the case of partial losses in particular, it [fol. 3696] was asserted in that case that the companies were put to an abnormal expense in the case of partial losses, more than had previously existed, because of the high cost of labor and materials; is that true?

A. That is true, that contention was made.

Q. And that was the gist of the claim upon which that suit rested, was it not?

A. Yes, that was the theory as I understood it of the surcharge, and when we came to the presentation of this case we concluded that that theory was a sound theory in view of the existing situation and what seemed to be the promised immediate future situation, but of course we had to be governed by our rating act, and went into the experience for the preceding years, concluding, whether correctly or incorrectly, that that was necessary under our rating act; but notwithstanding that, we went into the experience for the period of five years, the theory of course on that particular charge was that it was because of what was regarded as an abnormal situation and due largely and primarily to the cause that you have mentioned in your question.

Q. And it was proposed was it not, that instead of making a general change in the order which would change the basic published rates that a flat amount of say ten per cent should be added or stamped or printed upon each policy as the surcharge or a charge in addition to the rate charged?

A. That was the plan that we were attempting, yes—to get approved.

Q. And aside from four witnesses who were conacted with insurance companies, the remaining witnesses, except [fol. 3697] those who testified on formal matters, were contractors and persons familiar with the prices of materials and labor, and testified to the increased cost claimed to be abnormal in character, is that correct?

A. I couldn't say that I know whether there was four but the larger number of witnesses were used for the purpose of furnishing testimony along that particular line. Now, the number of witnesses that were used on the others, I can't be definite as to whether it was four or more or less.

Q. Now, in your testimony I understood you to say that your experience, so far as relates to fire insurance profit and loss computations and rate charges, was virtually, had its inception at the time of your entrance on the office of Superintendent of Insurance?

A. I would say absolutely and wholly.

Q. And how extensive has your study and activity been in that regard since the time you left that office?

A. I would say decidedly limited; only to the extent that I was interested in the trial of this other case and to merely the incidental extent of my interest in this rating act, which from time to time has attracted my attention at different phases of the matter; but I haven't given any attention or any study to the matter with any particular thing in mind since I left the Department, except to the extent that I saw fit to while I was engaged in this other case.

Q. Have you in connection with your inquiries into this subject read the writings of those who were or claimed to be skilled in the proper methods of computing income of in- [fol. 3697a] surance companies and examination of profit and loss?

A. You mean since I left the Insurance Department?

Q. Well, either before or since.

A. I think that at that time that I was in the Department there was scarcely anything that was written that came into my hands that I did not read, because the approximately two and a half years that I was in the Department the fire insurance situation was such in the state, in fact was such when I went in, and continued such, that I gave substantially all of my time and attention to the fire insurance problems rather than other branches of the Department.

Q. I was referring to those treatises that relate to the theory underlying the methods of computation, as to what the scope of your study on that was as distinguished from your own observations, I mean.

A. I wouldn't say definitely just what I read on the matter. I recall that my first active—first activity in connection with the matter outside of that which I was engaged in here while the companies were out of the state, started at the first insurance commissioners' convention after I became commissioner. At that time the Missouri situation became a matter of interest to the insurance commissioners; and Mr. Price, now Governor Price of Minnesota, joined Mr. Eckern of Wisconsin and myself in bringing about the appointment of a convention committee composed, as I recall it, of some nine members, nine commissioners, who were instructed to go fully into the question of fire insurance [fol. 3697b] rates, methods of making rates, and proposed legislation. Well, now, in connection with that committee we had frequent meetings——

Q. (Interrupting.) I don't mean to seem discourteous, but I was directing attention primarily to what you had studied or read on the subject.

A. Oh, I couldn't tell you. I wouldn't say that I ever took it up, if there be any text books on the subject, I wouldn't say that I ever read one; nor would I say that I had ever read anything other than just such articles as appeared in the insurance journals and that were brought to my attention through commissioners and interested parties. I don't think I ever read a text book, if there be one on the subject, but my experience was gathered largely from contact with the insurance commissioners and the representatives of the insurance companies.

Q. Yes. And what was your occupancy in office, during what years?

A. It began March 1, 1913, and terminated about the 10th to the 12th of August, 1915.

Q. Now, in December, 1921, Mr. Revelle, there was a report of the fire insurance committee of the National Convention of Insurance Commissioners dealing with this subject. Has that ever come to your attention?

A. I don't recall it. I may have seen it, but I can't recall it by that sort of a reference.

Q. Well, is that——

A. What year was that, may I ask?

Q. That was in the year 1921.

A. No, I am quite sure I have never seen it.

[fol. 3698] Q. Now, I will state, to perhaps refresh your recollection, if you have one, that that report was the result of two years of conferences between representatives of companies and representatives of insurance commissioners, and the report was made on December 7, 1921, and adopted by the Insurance Commissioners' Convention at that time, held at the Astor Hotel in New York. Do you have any recollection of ever having it called to your attention at all before this time?

A. I have never seen the report at all, Mr. Folonie, I am sure, because at that time—since that time I have had no particular interest in the matter, and even if I had heard of it I probably would not have read it.

Q. In that report adopted by the Insurance Commissioners' Convention underwriting profits or loss was defined as follows: "Underwriting profit or loss is arrived at by deducting from earned premiums all incurred losses and incurred expenses." Have you ever seen or had that formula called to your attention?

A. Will you read that again?

Mr. Barker: Just a minute. Let me make this objection to it: That we have been persistently objecting to the reading of any agreement between insurance commissioners and companies and have denied the legality of the documents and that it was adopted by a majority of the convention, and no evidence has been shown that it was and it has not been proven at all that it was, and we object to any reference to it as not binding upon the state in this case and pure hearsay.

[fol. 3699] Mr. Hogsett: I call Your Honor's attention to the fact that in the testimony taken at New York, by the proof of witness Kurth, proof was made that it was adopted.

Mr. Folonie: And this specific exhibit was admitted in evidence, but I don't have the exhibit so I can't refer to it by number.

Mr. Barker: We called on Mr. Kurth and demanded that he produce the record and he did not produce the record and no record of that has ever been introduced in this case, and we have persistently denied it and still deny it.

The Referee: Objection overruled.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still except.)

Mr. Folonie:

Q. "Underwriting profit or loss is arrived at by deducting from earned premiums all incurred losses and incurred expenses." Had that formula for computation of underwriting profit and loss ever been called to your attention before this time?

A. You mean before the time I am testifying here today?

Q. Yes.

A. I have heard of the contentions made in this particular law suit and I knew the contentions that had been made in the Arkansas case, because I was acquainted with the Arkansas commissioner and he told me of the question involved in your suit down there some years ago. Outside of merely having heard of such a suggested plan, I have not [fol. 3700] heard of it before, I am frank to say, and up to the time that Mr. Pullian of Arkansas told me the contentions made, that I had not heard, at the time we drafted our law, of any suggestion that underwriting profits or other profits be determined upon such basis.

Q. Now, I will call your attention to plaintiffs' Exhibit No. 1 in this case, and show you page 8 thereof, "Underwriting Exhibit," and ask you whether that exhibit as it there appears is not substantially identical with what it was at the time you were insurance superintendent of the State of Missouri?

A. You mean this whole page?

Q. Yes. Take your time and look over it so that you will be able to tell us whether it is not substantially identical with what a like or similar page was in the annual statements as filed during the time you were insurance superintendent.

A. Well, now, I can only say this: Of course, it has been a long time since I have examined the form of annual state-

ment that we used at that time. Is this your statement of Missouri business?

Q. You are privileged to examine it—I prefer you to draw your own conclusions from it, if you can, by examination.

A. Have you a copy of your annual statement used at that time?

Mr. Barker: Your Honor, we object to this.

Mr. Folonie: That is the complete annual statement there of a later year. I may say my purpose in not answering you is to ascertain your present familiarity with the statement and its contents. That is why I prefer to let you figure it out for yourself by examination, if you can.

[fol. 3701] A. Well, now, if you will furnish me with a statement of the form that was used at the time that I was in the department, I would be very glad to answer the question. From my recollection I would not undertake to state whether this is in the form that this part of the statement was in then or not.

Q. Well, I will ask you then more specifically whether it is not a fact that during the entire period of your incumbency in office as insurance superintendent, if there was during that period a requirement in the annual statement prepared by your office and sent to the companies, various companies, for execution, captioned "Premiums," with a formula as follows: "1st. Total premiums," with a blank to put in the amount; "2nd. Add unpaid, return and reinsurance premiums December 31st" of the year preceding; "3rd. Add unearned premium December 31st" of the year preceding the particular statement, and "total"; "5th. Deduct unearned premiums December 31st" as of the end of the particular year in question, and "6th," the total of that computation, "premiums earned during" and then giving the year.

A. I recall very distinctly that we required the companies to report to us their unearned premiums on their aggregate business throughout the country, but I have no recollection whatever of having them report to us their unearned premiums, on their Missouri business.

Q. Why should you require the companies to report their unearned premiums upon the business in the United States?

A. Simply for this purpose, that the annual statement, [fol. 3702] up to this time, particularly, that our rating act was passed, was intended primarily for the purpose of enabling the department to determine the financial condition of the company.

Q. Well, what has that to do with it?

A. Just a minute, and let me finish. It has this to do with it: That under the system adopted by the departments of determining the solvency of a company, they took into consideration everything that was recorded as a claim or a liability against it. The unearned premium—it was necessary for them to have the unearned premiums in order to know that part of the premiums which they had collected and which they had not yet earned. In fact, the primary purpose of it was to make sure that that company had a capital and a surplus, that is had at least a capital that would — unimpaired, and then that it also had sufficient funds to enable the department to reinsure all of its outstanding obligations if that became necessary. And if the situation became necessary for the department to take charge of the company to itself cause a reinsurance of its outstanding obligations.

Now, it was quite necessary to know that as to the aggregate business in order to determine the financial condition of the company. That of course was intended as a test of the financial condition or the solvency of the company.

Q. What has the unearned premium to do with financial condition of the company or its solvency?

A. It determines the class and—that is it determines with some degree of accuracy the class and the character of obligations that it has outstanding.

[fol. 3703] Q. What difference does it make whether it has any obligations outstanding?

A. As to whether it is solvent or not?

Q. Yes.

A. You mean a company that has no obligations is in the same condition as a company that has many obligations?

Q. Why, certainly, if you are going to take on written premiums, paid losses and expenses, what is the difference?

A. I am speaking of its financial condition, and the annual statement was intended as a test of its financial condition.

Q. What do you mean by financial condition?

A. Let me answer my question. Why, its condition with reference to solvency. The underwriting report was a report not for in any manner determining——

Q. (Interrupting.) We are talking about annual statements, now.

A. You are talking about written basis, too; you mentioned that, did you not?

Mr. Barker: Yes he asked you that.

Mr. Folonie: My question now is, what has the fact of whether they have unearned premiums outstanding, what has that to do with whether they are solvent or not?

A. Well, simply—I intended to answer you. Of course, I realize that is thoroughly in the record, that if a company has collected premiums in advance for carrying a risk for two years, three years or four years, that it either has to meet that obligation or it has to transfer the obligation. If it meets that obligation it may require so much money [fol. 3704] for that purpose. If it transfers that obligation it is going to take so much of its assets to get somebody else to assume it. The unearned premium is of course for the purpose of furnishing funds sufficient to take care of that future obligation, and it is to be determined, and necessary to be considered, in determining the financial condition of the company.

Q. Don't the company take care of all its future obligations out of the premiums which arise in the future?

A. Under its present practice, it pays them out of premiums received, if they are sufficient, but that doesn't—suppose the company would quit right today; if the company quit today and received no further premiums its obligations are still outstanding——

Q. Why should they——

A. (Continuing:) —and it should have assets sufficient to enable that company or the department, if necessary, to cause somebody else to assume those obligations.

Q. Well, if you are confining your inquiry solely to the period of the five years, and you take the premiums received during that period and the losses and expenses paid, why should they make any provision in any way so far as solvency test is concerned, for outstanding unearned premiums?

A. I think my answer has sufficiently answered that.

Q. Have you answered it as far as you are able?

A. I will say this: That my answer is this, that rates—if you are going into the question of rates—that rates are made for going concerns and for concerns which are going to continue to operate as they are now operating—or assumed that they will; which is to charge their [fol. 3705] losses to the premiums that they are collecting that year. That doesn't affect much of the obligations that they have assumed. The obligations which it is going to take money to either discharge or to reinsure.

Now, as to the necessity of carrying, or the question or wisdom of charging against a company, a liability for an unearned premium, I would say that that is such an elemental, such a fundamental, part of the fire insurance business that I don't care to make any further answer to it.

Q. You mean it is elementary that an unearned premium fund should be set up as a liability?

A. Why, certainly it should be.

Q. Well, have you ever—if you have absorbed it all in your given period, all of that unearned premium, in your given period, what do you have left out of that to set up as an unearned part, if you have absorbed them all by taking all your written premiums in the period?

A. You don't absorb them all.

Q. What is the company going to do, on your theory, that they pay their losses out of current premium writings, what are they going to do if their loses exceed their current premium writings?

A. That is exactly why you carry your unearned premium liability, to meet them.

Q. So that the unearned serves the office, if your premium receipts are inadequate, it serves the purpose of furnishing you a fund to meet those losses which you have to pay from time to time as the losses mature and accrue?

[fol. 3706] A. If you would eliminate the practice of paying losses out of current premiums—your unearned premium is intended to take care of every loss that occurs on the property that you have collected these unearned premiums on. But at least while I was in the department, the companies didn't do that; they did not charge back against the period for which they were claiming a credit for the un-

earned premium, they did not charge as against that period the loss which the unearned premium is intended to take care of, but they charged it as against the premium of the year when the loss occurred.

Q. Now, instead of charging it against the premiums of the year during which the loss occurred, don't you know that no company since the beginning of insurance has ever followed such a practice as you have just mentioned?

A. That is of charging losses against the year——

Q. Against the premiums of the year during which the loss occurs?

A. I say that so far as I have ever known of that no company in making up its statement of losses charges as against the year when the premium was written, in giving its experience on a given year. They do not charge up as against that year the loss that occurs, say three years afterwards, but charge it up to the year when the loss occurs; and if they do that, then they are not charging it as against the premium income of the year when the premium was collected.

Q. Now, did you ever hear anybody ever advocate that the losses should be charged against the year during which the policy was written or the premium collected, irrespective of when the loss might occur or accrue?

[fol. 3707] A. Never did until—in fact, I don't think that even such a suggestion would follow from any thing other than what I understand is the recent or modern suggestion of basing rates on the earned premium basis.

Q. And that is the way you construe the theory of proceeding on the earned premium basis, is it?

A. I have to—I think to make the plan of earned premium basis a complete plan, to make it a practical one, without subjecting it to all sorts of fluctuations, that it is absolutely indispensable to a successful and complete earned premium plan to charge against the year, that is for the purpose of rate-making and under our statute, to charge against the year when the premium is received the losses when they occur; or at least against the years throughout the—through which you spread your unearned premium, and in the same proportion.

Q. Now, is it your theory, Mr. Revelle, that in applying the written premium basis that the losses should all be charged against the year in which the premium is received?

A. It is not. It is not. My theory—and that is exactly one of the reasons why I think the written or the received premium basis is the practical basis and the basis that will avoid these situations, and in justice to either company on the one hand or the public on the other hand, as the case may be, because the business must be regarded—that is, its rate must be fixed in the light of the manner in which it is conducted, and in the light of what is probable in the future, because its business deals wholly with the future. It must [fol. 3708] be made upon the theory, as I see it, that the premiums collected in any one year will be sufficient to take care of all the losses that occur during that year, without regard to when the risk was assumed, and that will always continue to be the case as long as there is not substantial reduction in the premium receipts of the company.

Q. Now, in the case of a company—we are assuming for the purposes of this question that we have under consideration the period from 1917 to 1921 inclusive—now if the companies should, during the last of those years, during the year 1921—and I am exaggerating this proportion for the purpose of illustration only—supposing that the bulk of their business should be five-year business written during the year 1921, and you adopted the written premium basis, and you then take all of those premiums written during 1921 for five years insurance all into account as premium receipts, would you not?

A. I would.

Q. You would offset against those premiums received in the year 1921 the losses which had occurred on the policies written during that year, would you not, as part of your calculation?

A. As part of my calculation I would offset——

Q. (Interrupting.) Well, you would do that, would you not?

A. I am going to answer that in my own way.

Q. I submit that is a question capable of a yes or no answer.

A. I submit that is not the way I am going to answer it, if I answer it at all.

[fol. 3709] Mr. Folonie: I ask the direction of the referee directing the witness to answer the question yes or no.

The Referee: Read the question.

(Question read by the reporter.)

The Referee: Can you answer that question truthfully?

A. I can't answer that question intelligently by either a yes or no.

The Referee: Answer the question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I would charge as against that year's premium receipts, plus the premium receipts of the four preceding years, if that was to be the last of the five-year period—I would charge against those aggregate receipts the losses that occurred, not merely during the year 1921—which is your case—but the losses that occurred during 1921 and the losses that occurred during the preceding four years. I would not take any one year as the basis, because our statute prescribes, and the insurance officials insisted at the time this rating act was drawn, that the five-year period be made the period for determining that.

Mr. Folonie:

Q. Then your answer to my question is "yes," is it?

A. If in your opinion that is "yes" you may so interpret it.

Q. Now, if these policies, assuming that the bulk of the policies written during the last year of that period were five-year policies, although you had received the premium [fol. 3710] on those for five years in advance you would still have four years, more or less, to run under those policies written during that year, would you not?

A. Exactly. Exactly.

Q. And you would not, in making such a statement of profit or loss, take into account that unexpired term which had been prepaid for a future period, you would not take it into account at all?

A. I would not. I would figure that the returns for each of the four years constituting the other five-year period would be sufficient to take care of that; in fact, more than

sufficient, because the experience of the business shows that during the next year there will be an increase in the premiums, and I, particularly, would not do that as long as it is the practice of the companies as it is uniformly and has uniformly been to charge their losses in a given year or a given period against that year or that period without regard to when the premium is collected.

Now, if the companies wanted to change their practice with reference to that, and it is practical and would fit in with our rating act, then my answer would be different.

Mr. Folonie: I move to strike out all of the witness' answer after the first sentence, "Yes, I would."

Mr. Barker: Why, it is explanatory.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 3711] Mr. Folonie:

Q. Are you familiar with the second of the proposals adopted by the Insurance Commissioners Convention, number 2: "No part of the so-called banking profit or loss should be considered in arriving at the underwriting profit or loss." Are you familiar with that?

A. You mean with their recommendation?

Q. Yes.

A. That is the first time I have ever heard it read.

Q. Now, I notice that you have in your statement said nothing about the earnings of the companies from their investments. Have they in your judgment any proper place in determining the adequacy or inadequacy of the rate charged in the state?

A. I think that depends wholly upon one thing——

Q. I think that question can be answered by yes or no.

A. Well, I am not going to answer it that way, because it involves two elements.

Mr. Folonie: I ask the referee's direction on that.

The Referee: The witness may answer the question as in his judgment it is necessary to answer it in order to state the truth.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I will say that in determining a strict underwriting profit that the investment end should not be considered, but in determining, not an underwriting profit but in determining a reasonable profit, that is if you have a law contemplat-
[fol. 3712] ing that a company shall receive a rate that will insure it a reasonable profit, without prescribing from what source that profit shall come, then I think that consideration should be given to its investment earnings.

If you have a statute prescribing that a company shall be entitled to an underwriting profit, then I don't think that the investment earnings should be considered.

Now, I think there is all the difference in the world—I don't think that the investment profit is a profit that is a part of an underwriting profit, but I think that if the statute contemplates that a company shall have a rate which will give it a reasonable profit, without regard to whether it is an underwriting profit or what, then every source of profit should be considered in determining what is a reasonable rate in order to determine what is a reasonable profit.

Q. Do you think that a group of companies writing insurance in a state whose losses and expenses exceed their premium income in that state should nevertheless be subjected to a reduction of the rates because they have income from some other source entirely distinct from their underwriting in that state?

A. I think just that. Of course, as I say——

Q. I submit you can answer that yes or no.

A. Well, I want to say this, to make myself clear——

Q. No, I would like an answer to that question.

A. I want to know whether you are speaking of underwriting profit or any kind of profit.

[fol. 3713] Mr. Folonie: Read the question, Mr. Blume.

(Question read by the reporter.)

Mr. Folonie:

Q. Now, I am asking you as a philosophical question, now, not relating to any specific statute or its construction?

A. Yes. I think this——

Q. (Interrupting.) Can't you answer that yes or no?

A. I am not going to answer it in your language; no, I am not.

Q. I submit that a simple question like that can be answered reasonably yes or no.

The Referee: The witness may answer as in his judgment is necessary for him to answer for him to fully state the truth.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I think that without any regard to the statute that a fire insurance company conducting a business that is more or less impressed with a public character is entitled to a reasonable profit, on the money that it has invested in that business, and in determining a reasonable profit I should take into consideration the hazards to which its investment is subjected.

In determining what is a reasonable profit I think that every source of income that they have should be considered—if you are not restricted by any statute prescribing the character of source from which your profits must come.

What I mean by that is that if a company, say, has a large capital, has a large surplus, has a large unearned premium [fol. 3714] fund, if they had that unearned premium fund invested where it is drawing interest, if their surplus is invested where it is drawing interest, capital is invested where it is drawing interest, if the net returns from that are sufficient to show a reasonable profit upon their investment, even though there is not a penny of underwriting profit, I think that is all they are entitled to. I think if the returns from the investment—their other business—is not sufficient to give them a reasonable profit upon their investment, considering the hazards to which their investment is subjected, that then there should be a sufficient underwriting profit to add to that earning profit to give them a reasonable profit.

Q. If, then, the companies had a large contributed capital, had an accumulated surplus which they had accumulated during previous periods, anterior to the period you are con-

sidering—we are assuming 1917 to 1921—we will say that prior to 1917 they had through many years accumulated a surplus or contributed it by stockholders, and if through misfortune they should suffer a very grave loss on their securities through deterioration of market values and insolvency of the debtors who had issued the securities, that those losses shall all be reimbursed and added to such a premium rate as had previously existed so as to enable them to make good those losses and supplement them out of their premiums?

A. I think this: That is you——

Q. (Interrupting.) Well, do you think that?

A. Well, let me say this——

[fol. 3715] Q. (Interrupting.) I submit the witness can answer that yes or no. This is a skilled lawyer, and I submit the question, simple in form, could reasonably be answered yes or no, whether he so means or not.

The Referee: The witness may answer as he deems it necessary in order to state the truth.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I say that if you charge the companies with their earnings on their capital and their surplus and their unearned premium, then to the extent that they have suffered losses in their investment end, and those losses have come as a reasonable incident to the business, through no mismanagement nor no profit to the officials—in other words, if the investment has been properly and legitimately made, then its losses come as the result of that, if you take credit for the earnings on the investments the public should also then take into consideration and should account for the losses that come from the investment of that fund. I think that the one would necessarily follow the other.

Mr. Folonie:

Q. Now, if, Mr. Revelle, you had a proposition of a utility company which operated an electric plant, furnishing the electricity to the public, and also operated a gas plant furnishing gas to the public, and those two actitvities were conducted by the same corporation, with assets contributed

by the originators of the project, having common stockholders for one company organized and operating both [fol. 3716] activities, and they also had a street railroad also operated under the same corporate management, don't you know as a lawyer that those earnings in their separate activities are always by the courts separated and considered as distinct activities in which one is—the profit and loss from one is computed distinct from the profit and loss of the other, for rating purposes?

A. I think they should be, in that sort of a situation where they are engaged in entirely different activities.

Q. Now, I will ask you to assume in this premise that the company which is furnishing electriet power and furnishing gas produced—and furnishing power to operate a street railway line, with common power houses, same generators furnishing electricity for the street car line and also for the lighting, with the same fireman shoveling coal into the same boilers, same engineer operating the boilers to create the power in the powerhouses—don't you know that in that situation they are still considered distinct and separate and the rates separately considered?

A. I think they should be.

Q. Do you know of any concern which has a contact with the public where their activities are distinct activities, even though they are interwoven to that extent, where in rate making the courts have ever thrown them into a conglomerate mass and sought to give credit or charge indiscriminately, despite the separate character of their activities?

A. I know that in the life insurance bus-ness that the biggest—one of the biggest elements of profit, and of which the [fol. 3717] policyholder gets the benefit in the way of rates, that is made to him, is the investment of its funds.

Q. What life insurance companies do you have in mind?

A. All of them.

Q. Don't you know that the life insurance companies, the larger life insurance companies, the bulk of them, like the New York Life, New York Mutual, and you could mention them almost at random, are nearly all mutualized?

A. Oh, no, indeed they are not.

Q. Isn't it a fact that the stock life insurance companies are decidedly the exception?

A. I will say absolutely not; decidedly in the majority.

Q. Is the New York Life company mutualized?

A. No, no.

Q. You don't think it is?

A. Why, the New York Life, it may be. You have out in the east maybe a half dozen stock companies that have recently mutualized, but a half dozen is perhaps a half dozen out of some four or five hundred life stock companies that are on the strictly stock basis. And now I want to further answer my——

Q. (Interrupting.) Can you mention any large life insurance company organized under the laws of New York. Massachusetts, or Connecticut, that is not mutualized?

A. I wouldn't undertake to do that because I don't really know, but I do know this, I know that in all plans of insurance, whether stock or whether it is mutual, that the profit that is charged—money from which even the company has to pay a big part of its expense, comes from its profit on [fol. 3718] its investments and its savings in mortality. The loading loss to every company is an enormous account. In other words, the expense of conducting the business, the life insurance business, is greatly in excess of any element of charge that goes into the rate. That loss is getting and operating the business is made up and taken care of by the earnings on the investments of that life insurance company and their savings on mortalities.

Q. Do you think that a single fire insurance company in the United States would continue to subject its capital to the hazards of loss in fires if their returns upon their capital and surplus belonging to their stockholders were limited so that they would receive only a limited return in the event of the successful operation of the business, and in the event of that it proved disastrous by reason of conflagrations would be subjected to the loss of the whole of it?

A. I think that without regard to the cost, that they must respect the law, and if they operate in a state which says that they can have only a reasonable profit upon their investment, that they must either bow to that law or get out of that state and let other companies that are willing to operate there.

Q. You mean reciprocal companies that have no surplus, do you not?

A. I mean any company that is willing to respect a law and operate on a reasonable profit.

Q. Are you an advocate of reciprocal insurance?

A. I have never had any experience with reciprocal insurance in my life except when I was Insurance Superintendent a reciprocal law was passed and I supervised [fol. 3719] that. Now, I will ask you what you mean by an advocate?

Q. I think you are quite as capable of knowing what an advocate is as I am.

A. I don't know your meaning of it.

Q. Well, let that stand as your answer, then.

A. I have not represented reciprocals, I have no connection with them, I have no fight on them and no objection to them—as I haven't to any branch of insurance.

Q. Now, if you were going to adopt the theory of taking the entire income from investments and the income from underwriting and treat it as a conglomerate mass, you realize, do you not, that the reciprocal insurance companies do not have any capital investment that stock companies do?

A. I do.

Q. In other words, the subscribers to reciprocal exchange pledge their credit as distinguished from putting up money, isn't that a fact?

A. Yes.

Q. Now, in the case of a reciprocal insurance company where the stockholder instead of putting his money up to secure the policyholder simply pledges his credit and keeps the cash, the stockholder as an individual retains whatever income or profit can be gained from the money which would alternatively be deposited if he went into a stock company, does he not?

A. Yes.

Q. Now, in the case of a reciprocal company you would be compelled of necessity in determining what was a reasonable rate for charge upon policies in a given state, you would have to look exclusively to their underwriting experience [fol. 3720] to determine the questions, would you not?

A. Well, that depends on how many other assets they have for investment. If I were fixing a rate for a reciprocal company—of course, it is different from the stock company in this: That is, that is my understanding of them, and if they are operated according to the true reciprocal idea, that without regard to the rate that is charged to them in the

initial instance, whatever saving there is in that is returned to them at the end of a period. So it is not so material to them as to what the rate is, but if the state saw fit to fix the rate of reciprocals, I would fix them on identically the same basis and the same plan that I would that of a stock company.

If they have assets for investment, which they have, they have their assets representing unearned premium—if I subjected the investment of a stock company to an accounting for its earnings on that, I would likewise subject a reciprocal, if I was fixing a law to fix the rates in a reciprocal.

Q. Well, you recognize the fact that except for comparatively inconsequential amounts kept on hand for ready meeting of losses that reciprocals do not have assets by way of capital contributions at all, as a stock company does, do they?

A. Well, now, I don't know that that is true. You may be right. I don't know that, but if that is true then of course their earnings on their investments in the banking end of their business would then be that much less than the earnings of the stock company on its larger investments.

[fol. 3721] Q. You know that mutual companies in general do not have capital contributed by stockholders, in the sense that the stock companies do, do you not?

A. I do.

Q. You also know, do you not, that under the rating law the mutual companies are under the rating law and subscribe to the rating bureaus the same as stock companies, don't you?

A. I do.

Q. What would you do with the mutual companies who have no returns of a substantial amount on investments contributed by their stockholders, equivalent to capital of a stock company? How would you arrive at their profit or loss on their business?

A. Just exactly like the law says they shall arrive at their rate; if they want to do business under the Missouri law they have got to put themselves in with the aggregate; to whatever extent they have investments that they are getting returns on, I would charge them with those investments. I would add that to the earnings of the stock companies on their investments. In other words, I would not be making

a rate for those mutual companies alone but I would be fixing a rate in accordance with our statute upon the aggregate experience of all the mutuals and of all the stock companies and I would charge them with earnings upon whatever their investments were, just to the same extent that I did with the stock company—which works out exactly the same thing.

Q. In other words, as I understand you, you think the intent of the Missouri statute is that mutual companies, reciprocal companies, and stock companies, should all be [fol. 3722] thrown into one conglomerate mass, their assets, their returns from their investments, that all of them should be grouped together, return on capital grouped together, return on underwriting grouped together, on all those classes of insurance, and then ascertain whether that is productive of *two* much or too small a return on the business done?

A. I don't think that reciprocals are subject to the rating act.

Q. Well, mutuals, then.

A. Well, I think every company that comes within the purview of the rating act and operating under its provisions, that in arriving at a reasonable profit for them, and when you adopt the basis of our law it is—that is, the aggregate experience of them and not the experience of any one branch of them, that you should—now, this is not to determine underwriting profit, because I think I have made myself clear that I don't think the investment end has anything to do with the underwriting profit, but I think our statute is clear in that it provides for a reasonable profit as distinguished from merely an underwriting profit.

I would consider the experience of every company that was operating under the provisions of the Missouri rating act, and that were subject to it, and I would try to get their underwriting experience. If they had an underwriting profit which, added to their earnings on their investments, reasonably and properly computed, if that amounted to too much, it ought to be reduced. If it does not, it ought to be increased to bring it up to a reasonable profit.

[fol. 3723] Now, the question of what a reasonable profit is, I don't know and it is not my function to determine.

Q. Now, in the case of companies which during the period, we will say, of their existence under the license of the

State of Missouri have uniformly and continuously during that period lost on the underwriting activity, that is on their underwriting, computed separately, they had lost money year, we will assume, that is—we will eliminate Missouri companies from consideration for the moment, assuming that they are companies from other states, that means that the companies have put more money into the State of Missouri than they have taken out, doesn't it? If they suffered an underwriting loss?

A. If in point of fact there has been actually an underwriting loss, of course that follows.

Q. Yes. I am not taking any one basis against another, just taking underwriting loss as meaning premiums of whatever type they may be against losses and expenses, assuming a proper basis, whatever that may be, and the losses and expenses have exceeded the premiums on a proper basis over a period of years, the necessary result of that is that more money has been paid to citizens of the state by those companies than has been taken out, isn't it?

A. Quite true.

Q. With that experience over that period of time, we will say that stockholders in the State of New York, they have contributed money to the formation of their company, and they have been in business over a period of years, they have [fol. 3724] made a profit in other states on their underwriting, but in Missouri we will assume they have universally lost, you still think that if out of the money contributed by stockholders and earned out of their underwriting in other states they are not making a profit on their whole activities, on their investment end of their business, of an amount that is beyond what you consider a fair return on that amount of money, then despite the fact that they have lost money in Missouri continuously year after year they should nevertheless reduce their premium rates in the State of Missouri, do you?

A. I don't think that they should take a loss from their operations this way, that is that they should account for their profits outside of the state to the citizens of Missouri, but I think that to the extent of the proper proportion of their aggregate assets to their business in Missouri, to the extent of investment earnings upon that portion, the capital properly apportioned to Missouri, that if they are receiving on that the money with which they are doing business

in Missouri, that they are getting a reasonable profit, that they haven't any grounds for complaint.

I don't think, however, this: I don't think that there is ordinarily a situation where the investment end of the business, the banking business alone, will perhaps yield a reasonable profit. It has been my observation, if I am correct now in my recollection, that the premium income of the average company is from two to two and a half times annually its combined capital and surplus.

In other words, it has for investment not merely its capital and its surplus, but it has for an investment about two [fol. 3725] to two and a half times that capital and surplus which it collects each year; that is, which it has on hand all the time for investment purposes. That its aggregate premium income—at least, the figure used to be, I haven't figured that in recent years—the premium income an-ually was from two and—from two to two and a half times the combined capital—that money was coming to them as a part of their insurance business. I don't think that ordinarily the investment of their capital and of their surplus and of this two to two and a half times their capital and surplus which they have for investment from their premium income will ordinarily perhaps yield what I would regard as a reasonable profit upon their business; that there should be probably some underwriting profit.

But I think now that when you get to determining what is a reasonable profit that you should take into consideration all of these sources and then determine what is reasonable.

Now, if the—the theory of the law is to give them an underwriting profit as distinguished from a reasonable profit, I would say there is no question in my mind but what the investment end of the business should not enter into it—if it is strictly an underwriting rate basis proposition; but that has not been my theory of our law.

The Referee: Have any of you gentlemen a copy of the statute present?

Mr. Hogsett: Yes, sir.

The Referee: I would like to look at it.

(Referee examines statute.)

[fol. 3726] Mr. Folonie:

Q. Now, if you would adopt your theory of taking written premiums or premiums received—through—I use the terms rather confusedly, because I use the term written premiums and you use it "premiums received," but I think we mean the same thing——

A. (Interrupting.) Yes, we do.

Q. If you adopt the basis of written premiums as your basis of computation and set aside against it losses and expenses in arriving at your balance of profit or loss, you haven't any unearned premium in consideration at all, if you adopt that basis, have you?

A. You have not. You have not.

Q. Then if we should adopt the formula you mention we would not have any question of unearned premium or how much it amounted to involved at all, would we?

A. Not for the purpose of rate-making.

Q. Yes. For the purpose of rate-making.

A. You would not.

Q. And you would not have the question of what interest or profit the companies made on unearned premium, as distinguished from its earnings on its assets in general?

A. You would not, if you adopted my suggestion that earnings on all of their investments, after accounting for losses from the investment end, should be taken into consideration in determining the reasonable profit.

Q. Well, I made my question purposely narrow. My question was if you adopt as a proper basis for computation the basis of written premiums, paid losses and paid [fol. 3727] expenses, you treat the entire premium as an earned premium when received, do you not?

A. Yes.

Q. And there is no unearned premium, then, in that situation?

A. No. Your term "unearned premium" of course is a term—while it has a meaning in one sense, it has not a meaning except when you are using it in a given connection where it can have a sense or meaning. Now, if you adopt the received basis theory, it is of course simply the aggregate of the premiums received during that five year period less the losses and the expenses of operating the business, that is all. And now if you are going to take into consid-

eration, of course, the banking end of it, then whatever their assets are, whether you call them unearned premiums or whether you call them capital or surplus or what, you would take them into consideration.

Q. What is the formula by which the earned premium for a given period is to be computed?

A. Well, I don't know that I really know. My general recollection of it is that on a year policy that a 50 per cent of the first year's premium—now, this is something that I haven't had in mind for a number of years——

Q. Well, you mistake my question. My question is if, taking the aggregate of a company's business, not on a particular policy but on its aggregate business, if you seek to ascertain its earned premium for a given period or for one year, by what formula do you undertake to arrive at the earned premium?

A. Do you mean what percentage?

[fol. 3728] Q. No, how do you get at what the earned premium is?

A. Well, my understanding or recollection of it is that you arrive at it by taking a certain per cent of the gross premium, the premium received, and fix that as the unearned premium.

Q. Now, have you ever heard of a formula of computation by adding to the written premium for the period sought to be computed the unearned premium as it existed on the date before the beginning of the period, that is December 31st immediately preceding the period, adding that to the written premiums and then deducting the unearned premium as it existed at the end of the period, and thus arriving at your earned figure?

A. I don't recall ever having heard it.

Q. Now, if that method of computation be adopted, the consequence of using such a formula is to add to the portion of the premiums earned during the period from business written during the period also that portion of the premiums written during the preceding period which would then be treated as unearned, and putting them into the problem during the period under consideration, is it not?

A. That is the effect of that plan, yes.

Q. Now, if you—we will say that you are taking the period 1917-21 inclusive, which is the period we have here under consideration, the one year policies written during

the year 1916, which is immediately preceding the period we are talking about, would be treated as fifty per cent earned and fifty per cent unearned. The consequence of that is that half of all of the one year policies written dur-
[fol. 3729] ing 1916 which had not expired during that year, half of those premiums would be apportioned over to and carried into the year 1917, would they not?

A. I understand that is the theory of the earned premium basis.

Q. And the losses which occurred upon those policies written during 1916 would have in this succeeding period that portion of the unearned premium—of those policies written during the preceding period, carried over into the period in question to meet the losses on those policies during the period of 1917-21, would it not?

A. It would have one-half of the premium, yes. If you carried over one-half of the premium that you received in 1916, you would have one-half of that carried over for losses that occurred, of course, either that year or the next year.

Q. Yes. I purposely took the first year of the five, so as to carry forward one year of the policies only.

A. Yes.

Q. And it would be proportionately true as to any unexpired policies which existed on January 1, 1917; any unexpired policies existing would, on the unearned premium plan, have a part of the premium carried forward into this period to meet losses which might occur before the policies expire, would it not?

A. I understand that is part of that theory.

Q. Now, if, instead of taking the earned premium basis, you were to take the written premium basis, we will say a company had a capital of one million dollars and it had written policies to the extent of a million dollars of pre-
[fol. 3730] miums, that it had on its books during the year or the five years you had under contemplation, when at the expiration of the five years there was one million dollars of unexpired so-called unearned premiums still standing on its books, and if that company had a capital of one million dollars and a surplus of $100,000, would that company, according to the standards which are used in the Insurance Department of the State of Missouri, be solvent or insolvent?

A. A company with a million of business and a million of capital and a million of unearned premium and $100,000 of surplus—I think so.

Q. Let me supplement my question. I am assuming that the company has set up no reserve for unearned premiums.

A. Yes.

Q. That on a proper computation of unearned premiums there would be a million dollars of unearned premium to be computed if you were going to use that?

A. Yes.

Q. And they had a million dollar capital and their statement, in setting up such a reserve, showed $100,000 surplus, would that company, according to the standards of the Missouri department, as you understand them, be solvent or insolvent?

A. You mean if it had a million of capital, $100,000 of surplus, it had business in force which its unearned premium computed on would amount to one million dollars, would that company be solvent?

Q. Yes.

A. It would not.

Q. Why not?

A. Because under our law in determining the solvency of a company you take into consideration its obligations, [fol. 3731] just the same as you take in all of its obligations. If it has assumed a contract under which it agrees to pay a man in so many years so much money upon certain conditions, and upon the happening of certain contingencies, and if insurance experience has shown that that obligation which it has assumed is one that it is likely will cost it so much money, the law treats that as an obligation and as a liability, because it says it will require, allowing a certain margin for safety, it will require so much money to meet this, or it will require so much, rather, to reinsure this, and we will treat it as a liability to that extent. In determining your solvency, we will take into consideration all of your obligations which are likely to cost you money, and we will charge them against you.

Q. Now, if—it could very well be, could it not, Mr. Revelle, that a company which had a million dollars capital, which at the end of your five year period had a million dollars in the unexpired part of its obligations, which we call

unearned premium for convenience, by taking the basis of written premiums, paid losses and paid expenses, might show a profit of two or three hundred thousand dollars on the business and still you would call that company insolvent?

A. Read the question, please.

(Question read by the reporter.)

A. I don't think the question of the written basis would enter one particle—the difference in the question of the written basis or the earned basis would enter one particle into the question of what we would do with that company. [fol. 3732] Q. If a company—one of the companies of this group of companies here in suit, started business in the year, January 1, 1921, and started with a million dollars capital and a hundred thousand dollars surplus, and at the end of the year 1921 it had a million dollars of business on its books, in the form of unearned premium liabilities, and if the company's premium income during that year exceeded its losses and expenses actually paid during the year its written premium income exceeded its losses and expenses by $200,000, you, as superintendent of insurance, under the laws of Missouri, would close that company out and make them cease business?

A. Yes. In other words, if their unearned premium computed upon the basis that our statute provides for the computation of unearned premium, if that consumed their surplus, impaired their capital, I would close them up and reinsure them without any regard, however, to what basis I was fixing the rates on; because, regardless of the basis upon which I fixed their rate, their unearned premium would be figured according to the same computation.

The Referee: We will take a five minute recess here, gentlemen.

(Which was accordingly done.)

The Referee: Gentlemen, Mr. Blume has a question and answer which he wishes to read for the purpose of verification. Will you read it, Mr. Blume?

(Question and answer read by the reporter, as follows (p. 5531):)

[fol. 3733] "Q. * * * and if that company had a capital of 1 million dollars and a surplus of $100,000 would that company, according to the standards which are used in the insurance department of the State of Missouri, be solvent or insolvent?

A. A company with a million of business and a million of capital and a million of unearned premium and $100,000 of surplus—I think so.")

The Witness: I understood the question at first to imply that it had a million of capital and unearned premium of a million dollars, but assets representing such unearned premium, and in addition to that a surplus of $100,000, in which event the company would be regarded as solvent; but if it merely had in the way of assets the million dollars representing its capital and $100,000 designated as surplus, but not assets representing the unearned premium of one million dollars, it would be regarded as insolvent.

Mr. Folonie:

Q. Now, if a company had a million dollars of capital and no surplus, and wrote only a single policy for $100,000 during the year 1921, and applied to you as insurance superintendent in January, 1922, for a license, it had a million dollars capital, no contributed surplus at all, had written one policy of $100,000, which was written in December, 1921, on which the reserve, as I understand you, would have been but $50,000, there had been no losses at all under that policy, and the expense of acquiring it had been $10,000, would you admit that company to do business in this state?

A. I would not.

Q. Would it be impaired under the standards existing in the State of Missouri?

A. It would.

[fol. 3734] Q. It would be insolvent according to your standards, would it not?

A. According to the Missouri standards it would have an impaired capital.

Q. And would therefore be insolvent?

A. Exactly.

Q. Now, in order for that company to be solvent it would have to have enough from some source outside of the capital sufficient to make up not only the expense which had

been met during the previous year but sufficient more to make up the unearned premium requirements on that policy?

A. It would.

Q. And yet that same company, during the year 1921, would have received $100,000 of premium as its entire business and would have paid out only $10,000 altogether during that year for losses and expenses.

A. Exactly, but that ten thousand——

Q. (Interrupting.) And that would show on the basis of written premiums, paid losses and expenses, would show $90,000 of profit during that year 1921, would it not? If you confined their business to that?

A. To that single transaction?

Q. Yes.

A. Yes.

Q. Yes. And if instead of one policy for $100,000 there were 100,000 policies for $1 each, the situation would be identically the same, would it not?

A. Exactly.

Q. So that under the written basis which you mentioned a company might show a large profit on the basis of written premiums, paid losses and expenses, and still be insolvent [fol. 3735] under the standards of the State of Missouri?

A. It might, if you would limit it to a very short period, a few months. It would not any more upon the written basis during a period of any rate-making period any more than it would upon an earned premium basis.

Q. Well, the example or illustration that I gave you, does it not indicate that for the purpose of ascertaining the true condition of a company as to solvency you must set up a reserve for unearned premiums, otherwise you are drawing a false conclusion as to the solvent state of the company?

A. For the purpose of determining the solvency of the company, you have got to set up some more or less arbitrary standard. That standard has been set up in this state. It was set up many years ago. The state has never seen fit to change it.

Q. Well, if you had the exclusive power to make the laws in this state would you eliminate any provision by way of a reserve to take care of that and unexpired policies, in testing the standing of a company as to whether it was a going concern or was in fact insolvent?

A. Do you mean would I draw a law so as to not take into consideration at all their future obligations?

Q. Yes, that is what I mean.

A. I would not.

The Referee: Just a moment there. That theory upon which that standard is based in this state assumes a contingent liability which may arise by way of the outstanding insurance as an actual liability, practically, does it not?

Mr. Folonie: It does, for my purpose, yes; for the purpose of determining the immediate solvency of the company.

[fol. 3736] Q. Now, don't you know, Mr. Revelle, from your experience in the business world—I don't assume it is confined to the little scope you have taken here—don't you know that it is the custom of business in general for purposes of its own and for the purpose of publishing its statements to persons who may propose to deal with it, in making statement to Dun's and Bradstreet's as to their financial condition, that companies in general set up reserves for depreciation, for taxes, which have not yet been paid but which will have to be paid in the future, and similar contingencies which it is certain will occur but the extent of which is still to be determined by the future?

A. I think that is a very sound business method. I think it is followed by most companies that conduct their business on sound bases. It is not always done. In fact, the converse of it is sometimes done, for the purpose of misleading as to the actual condition.

Q. I am assuming, now, people who honestly wish to state their positions to persons proposing to deal with them. Isn't it a general custom, not universal, to set up reserves?

A. I would not want to testify as to general customs beyond my own class of business interests, because I have never had occasion to examine their statements or to deal with them. I would say this, that to the extent of the line of business that I have been connected with, take the company that I regard as a company operating on a sound basis, it will make for its own purposes and in order to keep from kidding itself as to its condition, it will set up some [fol. 3737] liability for what seems probable in the way of a loss or a liability in the future.

Q. And where you know that a loss will occur, but you are unable to tell just what it will be, and where a contract is to—a series of contracts is to extend over a definite term of time, do you know of any rule of business or sound practice more sound than to prorate the period of time which has elapsed and which will elapse and separate them by their relative periods of time, as a proper method of adoption of the income which is to furnish indemnity over the whole period?

A. That depends altogether upon the character of the business, upon the manner in which it is conducted. I think that what would be a sound practice as to one line of business might be thoroughly unwise as to another line of business.

Q. If half of the period of a given large group of policies has expired and half of it is unexpired, do you find any fault in logic with the practice of dividing the income paid in advance into two equal halves, applying half to the period which has elapsed and the other half to the period to come?

A. I do in the fire insurance business. I will give you my reasons, if you want me to.

Mr. Barker: Go ahead. I would like to hear them.

Mr. Folonie:

Q. I will ask you whether you recall in this law which you say you were instrumental in drafting Section 6282, whether you recall the requirement in that on the companies as follows—that certain companies, such companies, respectively, [fol. 3738] "shall report its earnings on unearned premiums and such other facts as the superintendent of insurance may require, for such period of five years."

A. Recall it quite distinctly, and recall the particular circumstance under which the language was used.

Q. Now, I will ask you whether the unearned premium as the term is there used, according to your understanding of this statute, contemplates that part of unexpired policies written during the five year period in question which shall extend beyond and to lapse in the future, as distinguished from that part which has expired—that part as to which the indemnity has expired or been used up?

A. The thing I understood by the use of that language and those terms was simply this: That the companies would report to the department all that was necessary, when computed upon the basis and the theory then recognized, as the unearned premium, with a view to determining what their profit was from their investment of that unearned premium.

Q. And by the unearned premium you mean, as you understand that statute, it means this: That the one year policies written during the five year period which is under contemplation, which have been written for one year and which have not expired entirely at the end of the period, on which an unearned reserve of 50 per cent is set up in their annual statement blanks, that it is that part of the premium that is under consideration?

A. Whether it is one year policy or whether three or five or what.

[fol. 3739] Q. Yes, but I am taking a one year to illustrate.

A. The part that would be regarded as unearned when computed upon the basis that our statute then prescribed for determining that.

By the Referee:

Q. Judge, let me ask you a question. In order that I may get the theory of determining the solvency or insolvency of a company under the practice of this state clearly in my mind: Take a different line of business entirely, say an ordinary bonding company, which has large numbers of bonds outstanding, in large amounts. In determining the solvency of such a company as of a given date, applying to it the same rule which you would apply in determining the solvency of a stock fire insurance company in this state, what would you consider as actual, fixed and ascertained liabilities, all liabilities which might result if all of the bonds in question became actual liabilities and had to be paid in full by the bonding company?

A. Well, now, in the absence, as there is absent, a statute in such instances as that, I take it that you would be free to use your judgment.

Q. Pardon me. I am asking now, assuming now that you are determining the solvency of the bonding company by the same method by which you are determining the solvency of a stock fire insurance company.

A. If you would apply, now, the same test or the same theory of ascertaining the liability upon those bonds that you do upon the unperformed policy obligation, it would be the same. But, now, as I understand our law, our law simply provides that we must treat, for the purpose of [fol. 3740] premium determination—in the first place, our statute provides that a company cannot do business here unless it is solvent. Then it says in determining solvency you shall take into consideration its capital—and it must have a capital at all times unimpaired.

Now, you shall, in determining its solvency, take into consideration its obligations, what they probably will have to meet. We will approximate—we will approach those obligations as approximately as we can by the following method: We will charge up against these obligations, that we don't know what the actual liability is going to be on them, but we will make an estimate, estimate that the liability is going to be so much, and for the purpose of determining now whether we will let you operate at all here or take advantage of our rates or do anything else you must have assets that will meet your probable obligations when measured by this standard.

Now, if you had the same law with reference to a bonding company and said *a* bonding company cannot operate unless it has an unimpaired capital, and if it said as to outstanding bonds that you shall determine its probable liability on those in such and such a manner, and in the same manner under the statute as to insurance policies, then I think you would have to apply the same test. But I don't know of any statute, and I don't think that that is the practical manner of determining the liability of a bonding company on that class of obligation.

[fol. 3741] Q. To be more specific, perhaps, assume that a stock fire insurance company operating in this state has outstanding policies which in the event of a total loss on all of the property insured will create a liability against the company of $100,000; in other words, it has policies outstanding the aggregate amount of which is $100,000. What would be the amount of the liabilities on those policies which you would charge against the company in determining its solvency or insolvency?

A. The standard that our statute fixes, which is—I am not positive, now, as to this—is one-half of the collected

premium on a one year policy, and then for policies that run for more than five years it is a certain——

Mr. Leahy: One year.

A. I mean more than one year—it is a certain portion of the collected premium, spread out through the life of the policy; five years, 90 the first year and 80 the second, and on that way.

Q. Then the specific question asked, you would not charge it as a liability against the company, the full $100,000 for which it might possibly be liable?

A. No, no.

Mr. Folonie:

Q. Now, just a question or two along the line of the court's questioning. If a company has a $100 premium upon a given policy of insurance written during this year, and it has not expired at December 31st, their unearned reserve on that would be $50, would it not?

A. That is right.

Q. Now, that $100 of premium may insure $10,000 of liability, may it not?

A. Yes.

[fol. 3742] Q. In other words, the proportion—the amount that is put up as reserve is a proportionate part of the premium as distinguished from a proportionate part of the loss undertaken to be indemnified?

A. Exactly.

Q. Now, as to a distinction between bonding companies and fire companies, that His Honor also mentioned. Do you recall from your experience that in the case of bonding companies there is no provision in their contracts as a rule for any return of premium in the event of cancellation?

A. I really don't remember. You are probably right on that, but I am not sure.

Q. Now, in the case of fire insurance companies you do know, do you not, that there is entirely—aside from their potential loss liability—there is also the duty to return a pro rata part of the insurance in case that the company cancels the policy?

A. Exactly.

Q. And also provision for cancellation by the assured by which he may receive part of his premium returned to him, in the event he cancels?

A. Yes, sir.

Q. Now, I understood you to say upon your direct examination that one of your reasons for believing the written or received premium basis to be correct was because it obviated any necessity of charging losses from a previous period to a present period. Does that state your position correctly?

A. It does.

Q. Now, if in the year 1917, which is the first of the series of years here under consideration, a million dollars of losses occurred to the companies in the aggregate in this state, under policies that had been written in the year 1916, you wouldn't have on your written premium basis any of [fol. 3743] the 1916 premiums in your calculation at all, would you?

A. No, sir.

Q. But you would have all of those losses happening in 1917 in your loss figure, would you not?

A. Yes, sir; that is correct.

Q. You spoke of reinsurance treaties or contracts on a basis of 50 and 65 per cent of unearned premium, and I want to clarify what I think you intended to say there. In the case of a company reinsuring a part of its business, not all, and where the agency plant of the company was not taken over by the assuming company, in a case of that kind commissions to such an extent as 50 to 65 per cent are never paid, are the?

A. I think that that would be the exception. I have known of instances, or at least an instance, I would say, of where 50 per cent of the entire outstanding obligations was reinsured on a basis of the reinsuring company paying 65 per cent of the unearned premium. That is, of them taking 65 per cent of the unearned premium in order to assume that obligation, and leaving to the company that reinsured 35 per cent of that as the purchase price of the business.

Q. Well, put it in another way. You mean that 35 per cent was retained by the company which had originally written the business direct and which reinsured it in another company; it retained 35 per cent of the unearned pre-

mium as its commission and paid over 65 per cent of the amount to the other company. Is that what you mean?

A. Exactly, that the other company assumed all of the obligations upon those policies for 65 per cent by taking [fol. 3744] 65 per cent of the unearned premium.

Now, isn't it the fact, Mr. Revelle, that that amount of commission, of 35 per cent, is exceptional, and that the usual and customary commission on the reinsurance of a part of a company's business, as distinguished from the whole, is usually 25 per cent?

A. Why, I am hardly able to say it is 25. I think myself that on a reinsurance of only a part of the business that 35 per cent is perhaps more than is ordinarily paid.

Q. Higher than the general run?

A. I think that the reinsurance—that is, my general information is that upon the reinsurance of all of the business that they sometimes retain from 35 to 50 per cent.

Q. Now, don't you know that the reason for the commission of, say 50 per cent, on reinsuring all of the business, as distinguished from reinsuring part at 25 per cent, has for its essential difference that in the case of reinsurance of all of it the agency plants of the reinsuring company are taken over and that that is why the higher commission is paid?

A. I know that is usually the case, but I have known of an instance where as much as 35 per cent was retained by the company that reinsured, and in addition to that my information was that there was a consideration paid for the agency plants; but I know that ordinarily when all the business is reinsured by a company, that the amount that they pay for that business, or the amount that the other company gets for the business, usually includes in that the value of a transfer of the agency organization.

[fol. 3745] Q. And that is the reason for the higher payment in that case than in the other?

A. Yes.

Q. In general.

A. Yes, in general that is quite true. Those things of course usually are matters depending upon the situation of each particular case, as the conditions under which the trade is made and all.

Q. Depends, too, on the character of the business which the company has to offer?

A. And the situation the company is in; a great many things.

Q. You know that it frequently happens that a company has a poor character of risks and its agency plants are of so little value that they find it unable to reinsure and get anything for their unearned premium, don't you?

A. I have never known of an instance like that, but I wouldn't say that couldn't be; because, of course, if a company had been very indefinite as to the class of risks that it assumed, and had been engaged in very bad underwriting, and had a bunch of indifferent, or, worse, crooked agents, that no company would care very much to take that business, at all.

Q. Well, it is a question of the character of the business as well as quantity?

A. Absolutely, no doubt about that.

Q. Did you have anything to do with the sale or reinsuring of the Liberty Fire Insurance Company recently in this city?

A. I did.

Q. How recently was that?

A. I think that was completed on the 30th day of April.

Q. Of this year?

A. No, 7th day of May.

Q. Of this year?

A. Yes.

[fol. 3746] Q. And I don't know whether I am entrenching on something I ought not to ask you about——

A. (Interrupting.) I am disposed to believe you would be and I would rather you would not ask me.

Q. Yes.

A. I would rather you would get it from the Missouri Department.

Q. Were you in the position of an attorney there for one of the interested parties?

A. I was.

Q. It is a matter of public knowledge that the Liberty Fire Insurance Company reinsured its business with the——

A. (Interrupting.) Oh, it is a matter of public record and the contract of reinsurance is there on file with the Department and I would prefer you would get it from that because I was an attorney in that case.

Q. You recognize, do you not, Mr. Revelle, that in the case of the destruction of Kansas City, and assuming this group of companies had a large amount of insurance on the property in this city, that the amount recoverable against those companies would be limited only by the extent of their entire assets?

A. Yes, and in the case of a destruction of a city like Kansas City that is quite true.

Q. And if those losses were scattered in various places of the United States, every policy has a recourse against all of the assets of the fire insurance company until his claim is satisfied, does he not?

A. Exactly.

Q. I mean, there is no provision of the law, either expressed or implied, limiting his right of recovery to a certain proportion or part of the assets or capital, surplus or any other part of their assets?

[fol. 3747] A. I am sure there is no law of that character in this state. I don't know that there is any place else or not. If there is I don't know of it.

Q. Are you familiar with the statute enacted by Congress several years ago providing for taxes upon the premiums of fire insurance companies?

A. I know there is some kind of a statute. I never read it and I am not familiar with its provisions and only know from just in a general way that there is such a statute and such a tax imposed.

Q. Are you familiar, either by reading or otherwise, with the provision of that statute that determines the profit of the companies upon which the tax shall be imposed upon the earned premiums of the company and prescribing the method of computing the same by taking the unearned premium at the inception of the period, adding to it the written premiums during the period and deducting the unearned premium at the end of the period and imposing the tax upon the, *ralict*?

A. I am not. No, I am not familiar with it.

Q. Are you familiar with the fact, Mr. Revelle, that the—that every Insurance Department in every state of the United States imposes the obligation upon the fire insurance—stock fire insurance companies of those respective states to make an annual report to those states of their

underwriting experience during the lapsed year upon the basis of earned premiums, incurred losses and incurred expenses?

A. Do you mean their underwriting experience in each state separately?

[fol. 3748] Q. For the United States?

A. I know the convention blank requires and I assume that most state departments use that—in fact, I am quite sure that most of them do, and probably all of them use the convention form of report—and that that report provides for a statement of their unearned premiums in the aggregate throughout the country where they do business but I don't know of the companies reporting to any state upon any annual statement there—the unearned premium on the business in any particular state.

Q. Well, showing you plaintiff's Exhibit 1, being the annual statement form of the State of Missouri, on page 10, "Underwriting exhibit, premiums, premiums earned during 1921, and underwriting profit and loss items, underwriting income earned during 1921, losses occurred during 1921, underwriting expense incurred during 1921, profit or loss from underwriting during 1921," as the total of the page, and I will ask you whether that, in substance, has not been in force and required by every Insurance Department of every State of the United States during your incumbency in office?

A. If that is the report of their business throughout the country——

Q. (Interrupting.) That is it.

A. (Continuing:) Where they do business——

Q. (Interrupting.) That is what it is.

A. —that is entirely correct.

[fol. 3749] Q. And is it not a fact that the form requiring the companies to return as an underwriting exhibit, premiums earned during the year, losses incurred during the year, underwriting expense incurred during the year, and the balance between the premiums earned on the one hand and losses and expenses incurred on the other as a footing at the bottom, "Profit or loss from underwriting during 1921," whether that has not been the identical requirement ever since you have known anything about insurance?

A. That is the identical form, in so far as I can recollect, that was used in the Department as to their aggregate ex-

perience throughout the country when I was in the Department and in so far as I know the form that has always been used.

Q. And hasn't that been uniformly so required and used by every Insurance Department of the United States since your knowledge of fire insurance began?

A. Well, I of course, couldn't say that definitely. It is my impression that all of the Departments are using the same form and were at that time.

Q. And haven't they continuously during all this period of years?

A. I would say that is my impression but I wouldn't say that as a matter of actual fact.

Q. Don't you know that the companies in keeping their own experience for their own information have uniformly through this whole period used this same identical basis for determining their national experience for the United States, namely, on the basis of earned premiums, losses incurred and expenses incurred?

A. I don't know that. I assume that that is true as to [fol. 3750] their national expense experience. I don't think that is true in their own system or was not true in their own system as to their underwriting experience in states.

Q. Now, isn't it a fact that the companies did not keep their underwriting experience of states at all, of any fire insurance company doing business in this state, that there was not a single one that kept their experience state by state except as you sent them blanks which they were required to fill out?

A. I really don't know.

Q. Did you ever see a book by a single fire insurance company where they kept their experience, either nationally or by states on the books of those companies upon any basis except earned premiums, incurred losses and incurred expenses?

A. I don't think in all my limited experience that I ever saw the book of a fire insurance company in my life of any kind.

Q. Now, if the Insurance Commissioners of the United States in their convention have adopted the basis of determination of profit or loss within the respective states upon the basis of earned premiums, incurred losses and in-

curred expenses, and if that is the consensus of opinion among those engaged as underwriters in the business of fire insurance and if that is a statute making a like distinction, enacted by the Congress of the United States, you, from your experience of whatever number of years it was in the Insurance Department of the State of Missouri, say they are all wrong, do you?

A. Well, I would say this, I would say that I have very high respect for the judgment of some of the Commission-[fol. 3751] ers, and very high respect for some of the reports that they make. On the other hand, I know enough about the experience in these conventions to know that many reports are made under conditions and under influences that would not change my own opinion at all upon a given subject if I had a given opinion upon it.

Q. Now, when you said a while ago that you favored the written basis because you thought it was simpler for the Insurance Department to use, did you mean that an improper basis ought to be used so that it could be brought down to the level of the intelligence of every Insurance Department that might have incompetent people in it—did you mean that inference to be drawn?

A. No, I would not sacrifice other things merely to simplicity on the report. That was merely one and I might say minor reason that I have for believing that the other basis is decidedly the fairest basis and the basis that approaches more approximately a degree of accuracy as to their experience and is more scientific in the way of a basis than the earned premium base. That was one of the minor reasons for it.

Q. Now if, during a period of five years' experience—if during that experience very heavy losses occur during the first year, we will say a dozen losses of $750,000 apiece happened in various parts of the United States on December 31st or on January 1st, 1917, under your theory that would all go into the experience from 1917 to 1921, inclusive, would it not?

A. Exactly.

Q. Now, if all of those scattering and large losses were all under policies written during the previous period, 1916, [fol. 3752] you would not have any of the premiums from any of these risks in your calculation, would you?

A. You would not.

Q. So that you would not be requiring the premiums in fact received during the period to bear the losses upon those premiums receipts themselves, would you?

A. You would not.

Q. Do you believe that it is in the interest of the public—the insuring public in general, not having in mind any specific policyholders, but the body of them in general, that the companies should accumulate reserves beyond the local requirements I mean—keep those reserves and keep them in the treasury of the corporation rather than to distribute them among stockholders? I mean within reasonable limits.

A. You mean in the way of a surplus fund?

Q. Yes.

A. Yes, I think that it is decidedly important to any company whose business is that of dealing with future and unascertainable contingencies to preserve some fund in addition to its capital, especially when your law says that your capital cannot be used for the purpose of meeting those contingent obligations.

Q. Well, what I had in contemplation was that after complying with the strict requirements of law as to reserve, say that you have complied with the legal requirements——

A. (Interrupting.) I understand.

Q. (Continuing:) —is it advisable, in your judgment, not for the interest of the companies now, but for the insuring public, that a surplus beyond that be accumulated and kept by the companies in their treasury rather than to [fol. 3753] disburse it all among their stockholders?

A. I think that it is to the interest of the public and to the interest of the companies, I think that whatever is to the interest of the companies within the limits of reason is equally to the interest of the public, and I think it is of interest to both for any sort of an insurance company which has got to deal merely with things in the future and where its liabilities cannot be determined at the time to maintain in addition to its capital and its required reserve some reasonable surplus, but I don't look upon any insurance company, life, fire or otherwise, as a company that I would want to insure in if I had any large risk to insure unless they were carrying some surplus in addition, and by surplus I mean, of course, some amount over and above their capital and their reserve liabilities.

Q. Do you recognize the fact that some companies, through the skill of their management and their foresight in their investments may secure a materially higher return from their investments than those who are comparatively poor in their foresight and judgment as to the character, type and security and return of their investments?

A. Certainly do.

Q. Is there an element of investment skill which may be productive of an increased or decreased return, dependent upon its existence or non-existence?

A. There certainly is.

Q. Do you believe that if the investment return of all companies which you would consider a reasonable return should be based upon the return which is made by the best [fol. 3754] and highest managed and most skillfully managed ones or upon the average?

A. Well, I think this, I think, of course, that you have got to, in measuring a company or in regulating it, that you have got to do the same thing that the company has to do and an insurance company of every kind has got to deal with losses and percentages and averages, and in measuring the company or supervising the company, especially when you are doing it through a system, not an individual supervision, but an aggregate one, that you have got to arrive as near as you can at what would be an average; but I think this, I think that the business is sufficiently impressed with the public interest that the public has the right to require that even the average be of a business-like type.

Q. Yes?

A. (Continuing.) And I don't think that the public ought to suffer because you may get into the business enough fellows who were reckless in their management or who were dishonest in their management to substantially or materially reflect itself in the rate they were going to have to pay for it, and it has been my observation in looking over reports of fire companies and of recent years more particularly through the life companies, that while there is a difference, of course, of some companies over others—in fact, that is really largely the difference in a successful and an unsuccessful company—but I think that there is not on the whole such a difference when you go to reflecting the thing in the aggregate experience of the companies that it

makes very much difference. I think I have that high regard for the manner in which the business is conducted.

[fol. 3755] Q. Now, if an average of the investment return only were to be allowed to all companies, that would mean, then, that the company where there was special and extraordinary investment skill productive of a higher return than the average, that they would get no benefit from the use of that unusual skill in that particular, but that surplus would be taken away from them by virtue of a rate predicated on the basis of the average experience?

A. No. If you get into the business enough men who are skilled it would not reduce the average. It will bring the average up to where it ought to be; to the extent, of course, that if you would pick out one or two or three companies and say that they alone were managed by skilled business men who were getting the best results from their investments, and then if all the rest of the companies are handled by unskilled and inefficient business men who made very poor results, you are going to bring down upon the lot the percentage and average of earning that the three or four skilled ones are going to get, but if your average of skilled ones—and I think that the average of men conducting the insurance business when it is one of public interest ought to be by skilled men—I do not think it is going to make a very great difference in the average.

Q. Don't you recognize the fact that foreign companies, foreign to the United States, required by law to have $200,000 deposited usually with the State of New York as the equivalent of capital and who leave a part of their surplus in the United States branch of their company—if you were [fol. 3756] going to adopt a theory of taking their profits on their investments, whatever they might be, from them as their investments in the United States existed, that there would not be any surplus of those companies in the United States and you would fail of any return from those alien companies at all?

A. Well, I think that if the foreign companies can not operate under a system that the public sees fit to adopt and one that is found to be fair, then I say let them go.

Q. Now, don't you also recognize—you have got the foreign companies all out now—don't you also recognize that the companies domestic to the United States and foreign

to the State of Missouri, if such a policy as you propose were to be adopted, namely, that in a state where the business therein conducted was conducted at a loss that they should suffer a further increased loss in that state because they made enough from their investments of their capital and surplus to more than offset it—don't you recognize that fact, Mr. Revelle, as a thinking man, that they would not retain any surplus in their treasury beyond the strictly legal requirements, and would dispose of the rest of it among the stockholders and let the stockholders invest it and get the returns on it themselves?

A. I would not want to say what a majority of the executives of the fire insurance companies would do. I think that is entirely too speculative. It is for me. I think this, however, I have this respect for the executives of the average fire insurance companies to believe that if any system is adopted in a state which will give them a reasonable re- [fol. 3137] turn upon their investment, that they are going to be satisfied with it. If they are not, then I think they are entirely too unreasonable for the public to undertake to deal with or to satisfy.

Q. Don't you recognize the fact that if the fire companies in general, assuming that they have been making a loss on the business of insurance in the State of Missouri for a given period of years, were to have that loss increased by a reduction of rates, because of the fact that they made enough money upon their other business, namely, their investments or their underwriting in other states, so that on the whole the corporate profit was a fair return on their money, and such a principle were once invoked in the State of Missouri, that the effect would necessarily drive any business man out of your state if such a theory were adopted?

A. No, I don't. I don't think that because from the time that I have first known anything of the fire insurance business I have never heard anything from the fire insurance people except that they were operating and had for years operated in the State of Missouri at a loss. I have heard that from 1913, the day I went into office, up to this time; that they have continuously operated at a loss, but notwithstanding that they have continued to operate here and other companies have continued to come in here.

Now, I am driven to one conclusion on the matter, and

that is, that in point of fact their statements that they have not been operating—that is, that they have been operating at a loss are either erroneous or if they are correct that they will operate in a state where their experience is not profitable.

[fol. 3758] Q. Don't you recognize the fact, Mr. Revelle, that some companies have operated at a profit and some at a loss in the State of Missouri through all the time you have known it?

A. And I think that that will continue to be the case upon any theory of rate-making. In other words, I think, going right back to your idea a while ago, some companies being carefully and successfully managed and operated and in a manner that will make money where other companies won't. Now, if you are going to adopt a rate upon the average experience as our law provides, you are going to fixe a rate where the inefficient, indifferent fellow is not going to be able to get a profit of the business and I don't think you can ever arrive at a rate that is reasonable towards the public, but that you are going to have a rate where the inefficient and indifferent executive or company is going to be able to get a profit out of the rate. I think that is true of any business where you fix the compensation or the rate upon the average experience of those engaged in it.

Q. Well, the very fact of an average implies that some are below and some above the margin of loss, does it not?

A. Yes, sir; exactly.

The Referee: Mr. Blume, I wish you would read Judge Revelle's answer just preceding the last one. I want to be sure whether I understand it correctly.

(Answer read by the reporter.)

A. I meant that any system that is fair towards the public, when it is based upon an average experience of those engaged in that business is going to result in a rate where [3759] the company or the executives of that company who are inefficient and who are indifferent and who conduct their business extravagantly, that that rate is not going to reflect a profit to that company.

The Referee: I thought that is what you meant, but I didn't think you had stated it.

Mr. Folonie:

Q. If the owners of a stock fire company, naturally the stockholders, would withdraw their capital and their surplus from the insurance business and withdraw from the business entirely, having set aside sufficient to care for their unexpired contract, or permitting them to expire, they could take their capital and their surplus after discharging their liabilities, and invest that money in securities of the same kind in which they now invest, or other securities, bringing a higher return, if they saw fit, couldn't they?

A. Yes, but in that case they would have nothing but their capital and surplus. They would not have for investment purposes the premium that they collected and which they hold from year to year on polices that they are not meeting any obligations on.

Q. I am talking about the capital and surplus now.

A. Yes.

Q. They would have that free of the hazards of fire insurance, would they not?

A. Quite true; quite true.

Q. You also know, do you not, that the investments to which fire insurance companies are limited by law, particularly in eastern states, where most of them are organized, limit the character and class of investments which they can make?

A. I do.

[fol. 3760] Q. And you know that an investment which they make which goes for a specified number of years without bringing in a dividend, thereafter becomes what is known as an unadmitted asset and they can not even show them among their admitted assets?

A. Well, I know there is a class of investments when it reaches a point—in the first place I know that when investments are made in securities or other business that the law does not permit—is a non-admitted asset, but, of course, the company is responsible for that investment because it is violating the law when it puts this money into investment.

Q. Well, I am assuming it is an admitted asset when purchased, but that because of the changes in the failure to pay dividend over a period of years it becomes what is known as a non-admitted asset—that occurs, doesn't it?

A. Well, I assume that occurs in some instances, yes, perhaps where bad judgment has been manifested in the first place in investments in that class of securities, or where at least it has not proved a good investment, and I assume that there are instances of investments in that class, and where they were admitted assets at one time, and because of a failure on the part of the company whose security they have invested in, that that has become a non-admitted asset.

Q. But when the company does not go—when it goes for a period of years without paying dividends——

A. (Interrupting.) Well, I say, when it has failed of success.

[fol. 3761] Q. Yes. Now, if the stockholders in a fire insurance company—stock fire insurance company should withdraw all their capital and all their surplus, divide it among the stockholders and reorganize as a reciprocal or a mutual company and pledge their credit instead of putting their money up they could go on and do the same kind of insurance business in the State of Missouri as the stock company, could they not?

A. Well, I wouldn't say the same kind, no. They would operate under altogether different conditions and different plan and operate under different laws altogether.

Q. I mean they can write the same kind of insurance?

A. Oh, they can retire from the stock insurance business and go into the reciprocal business.

Q. And they could take their capital and surplus and divide it among their stockholders, couldn't they, and let them individually invest it if they saw fit?

A. If they wanted to dissolve the corporation and if they met the law as to dissolution, I don't know of any reason in the world why they couldn't do it and after they had met their obligations to all except their stockholders, I don't know of any reason in the world why they couldn't do whatever a majority of their stockholders wanted to do with the funds of the company.

Q. And they could then pledge their credit and organize a reciprocal exchange and go on and do the same kind of insurance business without putting any of this capital or surplus up which previously as a stock company they had had put in the corporate treasury?

A. I don't say the same kind. They could do a reciprocal business.

[fol. 3762] Q. What kind of insurance can a stock company write that a reciprocal company can not write?

A. Well, I don't want to be an authority on this proposition. I only want to quote what the stock companies themselves have said to me, and particularly stated to the public during the time that we were having our trouble in this state; that is that reciprocals are in no position to handle large risks, that the class of insurance—class of security and protection that they give them is of a different class to that which the stock company gives; that reciprocal insurance is not of a class and a character that it can take the place of stock insurance. Now, the reasons for the stock companies making those statements I don't know and I don't care to vouch for them and I am not vouching for the correctness of those statements, but those are the statements made by the stock companies, that the reciprocal company can not supplant the stock company. There is no doubt but what they can go into the reciprocal business and conduct the reciprocal business to the extent that it practically and legally can be conducted, or they can withdraw the capital if they want to go out of the fire insurance business, they can do so and put their money into something else and let somebody else come into the fire insurance business if they are not satisfied with the conditions under which they are operating.

Q. Well, suppose they saw fit, instead of doing that, to each reduce their capital to $200,000 instead of millions of dollars, as many of them are, and would have no surplus beyond such an amount as was necessary to set up their legal reserves as required by law, such as unearned pre-[fol. 3763] mium, and would take all of the remainder of their capital and all of the remainder of their surplus and divide it among stockholders, there wouldn't be any reason, if the stockholders saw fit to pledge their credit to the corporation, say to five or ten times the amount of the capital that they had subscribed for and paid, and deposited those pledges with the company, there wouldn't be any reason why they couldn't do business with that great reduction in their surplus and capital, would there?

A. I think so. I think there is a reason.

Q. What is the reason?

A. I don't think that a company that now has a large volume of business, that has a capital and a surplus, that reasonably warrants it carrying that volume of business could reduce its capital and its surplus and get by, in the first place, the Insurance Department, and in the second place, couldn't get by with the public, because it has always been regarded, insofar as I have been informed that no company is safe where its premium income is more than three times its capital and its surplus, and in fact it is not regarded—it is regarded as very topheavy when it has a volume of business that yields that ratio of income. I think the average now is about two—certainly not in excess of two and half per cent, and the company that wanted to reduce its capital and surplus and distribute that among its stockholders would have to retire very largely from the field that it is in now.

Q. Don't you know that the very situation that I am presupposing in my question is exactly the situation now of the foreign fire insurance companies, foreign to the United [fol. 3764] States, which, instead of having a capital of millions of dollars like domestic companies, have a statutory deposit of $200,000, and that the security rendered by having a home office in England, which pledges its credit to the United States branch, is what gives them their standing instead of the actual money piled up here in the United States?

A. Yes, but I know that a fire insurance company cannot be incorporated under the laws of this country and become an operating company based upon pledges made by its stockholders. Its security has got to be in its own assets, in its capital and its surplus and not in collateral pledges that the security furnished.

Q. All right, how much capital and how much surplus above its liabilities by way of unearned premiums does a company have to have to go into business?

A. Repeat the question.

(Question read by the reporter.)

A. Under the law it has to have its capital unimpaired.

Q. How much capital?

A. Different states fix different requirements. This

state fixes, my recollection is, $200,000. Different states, though, have different limits.

Q. How much surplus do you have to have in this state?

A. None whatever.

Q. Then if each of these companies reduced its capital to $200,000 and retained enough money in the treasury to set up reserves for all of its liabilities, including unearned pre-
[fol. 3765] mium, it would be a solvent company entitled to do business in this state, would it not?

A. Yes, but the Insurance Department would not permit it to do business in this state if its aggregate business was yielding it a premium income in excess of say $500,000—if it did that. If it wants to limit its capital and surplus it has to for the same underwriting reasons limit also the amount of business it takes. Now, if it wants to become a little company and wants to engage in the business in only a limited field, it can reduce its capital, it can do away with its surplus, but when it does it it impairs its opportunities to make money for its stockholders and impairs its usefulness; but one of your big companies cannot reduce its capital and distribute its capital and surplus among its stockholders and continue to do the volume of business that it is doing now. Sound underwriting principles won't permit it. If it did it would be liable to become busted in six months' time.

Q. I am confused, Mr. Revelle, as to what your statement about two and a half times was. Will you restate that, please?

A. I say that I have always regarded and I have understood that it is a sort of an accepted underwriting rule of safety that no company, no fire company can safely write a volume of business in excess of what yields at most three times its aggregate capital and surplus, and I think that three times is really excessive. I think two and a half times is more reasonable than three times because——

Q. Do you mean the premium income shall not exceed three times?

A. I do.

[fol. 3766] Q. (Continuing:) The capital and surplus combined?

A. Yes, sir; because I think that if a company goes beyond that point, it is assuming now on each dollar of pre-

mium received it assumes what may be an actual liability of 100, or many times—at least 100 times that one dollar premium it receives. Now, if it has a given capital and given surplus, then it ought not to be permitted to go on risks that will be in excess of what the premium income—that is, where the premium income is more anyway than three times the combined capital and surplus, and a company is topheavy and is liable to not be able to meet its obligations if that is true, and that is particularly true in the case of a conflagration or anything approaching a conflagration.

Q. Well, then, take the case of the Home Insurance Company which in the year 1921 had in the United States net premiums of $42,000,000, you would require a capital and surplus of that company of approximately $15,000,000?

A. Well, around thirteen or fourteen million dollars.

Q. Around thirteen or fourteen million dollars. Therefore, if the Home in 1921 had a capital of twelve million dollars and had a surplus over all liabilities of $20,900,000, about 32 million or 33 million dollars almost, they could divide $20,000,000 among their stockholders, then, and still come within your rule?

If they wanted to stop where they are, not enlarge their business, satisfied to keep the business they had?

A. I think so. I regard any company as within a safe underwriting policy where it does not go more than two [fol. 3767] and a half times. I think three times is too large. I don't think that the average company throughout the United States will exceed now two and a half times its combined capital and surplus. I think they are wise in keeping it down to that. Some people say three times, but I think that is excessive.

Q. If then the companies in general have a capital and surplus that now exceeds the amount of their premium writings, they could with reasonable safety divide up half of their capital and surplus among the stockholders and still have plenty left to do business and only add to it as their business extended?

A. Yes, and I really think that from the public angle that to the extent that the companies expect reasonable returns upon both their capital and their surplus that they should not maintain as surplus and a capital upon which

they want public returns in excess of what the volume of business reasonably warrants.

Q. Therefore, if they have a capital and surplus very decidedly beyond what is really required in the business, that capital and surplus ought to be eliminated really from the computation according to the methods used——

A. (Interrupting.) I don't say it should be because I don't think that it is so thoroughly out of line with what is reasonable, but I say in the event it should become that, I think that every company should maintain some surplus.

Q. Well, take the case of the Home Insurance Company, which has a capital and surplus practically equal to the amount of their premium writing, you think that they have [fol. 3768] more than they used in their business, then?

A. I don't say that. I would not place this upon any one company because my statement that in fixing rates the public interest is entitled to certain things is based not upon the condition of any one company but upon the average condition of the company that is going to operate under these rights, and I say that if the average capital and surplus of the average company operating in the state is grossly in excess of say two times its premium income, that it has money there that is not serving the public and that if the stockholders see fit to leave it there without any service to the public, that they are not in very good position to ask for anything more than the same returns that they could get on it if they put it in any other line of business.

Q. Therefore you would substitute your judgment from two and a half years in the Insurance Department of Missouri against the consensus of opinion in the fire insurance world among the managers of these companies who believed that it was to the interest of the public to accumulate sums far in excess of actual requirements so that they might be prepared to meet any possible contingency even though not immediately probable—you would set up your judgment against all of them, would you?

A. I not only would not do that, but I say that the statements involved in your question are not the correct statements of fact.

Q. You know that the Aetna Insurance Company has in the accumulation of this surplus accumulated it over a period of approximately 100 years and a little over?

[fol. 3769] A. I don't know the experience, and as I say, I am not dealing with any separate company. I am dealing with an average condition.

Q. And if their capital and surplus combined is approximately the same as their premium writings, you think they have a capital and surplus larger than is really essential to the proper management of their business, do you?

A. I think they have a capital and surplus in excess of what is reasonably necessary to carry on the business—the volume of business that they now have.

Q. And do you think that your judgment as to how the Aetna Insurance Company should run its business, from the experience you have had, is superior to that of the officers and directors of the company?

A. I do not, but the fact——

Q. (Interrupting.) Have you ever had——

A. Wait a minute now, and let me answer the question. I do not, but the fact that they do something else does not change my views one particle.

Q. You did not have to dig in your pockets as a stockholder of any fire insurance company at the time of the San Francisco conflagration to help pay those losses, did you?

A. Well, only to the extent that I was paying perhaps fire insurance rates to that extent.

Q. You were not a stockholder in any company?

A. No, but the fire-insurance-paying public, of course, paid that loss, or a big part of it. They paid it either then or they paid it prior to that time or subsequent to that time, and to the extent that I was one of the public that was paying fire insurance rates I contributed my part of it.

[fol. 3770] Q. And were you familiar with the fact that the stockholders of the Home Fire and Marine Insurance Company levied an assessment upon themselves of 1,000 per cent upon their stockholdings in order to meet the fire losses that arose out of that disaster?

A. I don't know the percentage. I know that most of the fire companies had to contribute money in order to meet that part of the obligations which they did meet. My understanding is that but few of them met anything like all

of their obligations, but that most of them had to contribute for the time being——

Q. (Interrupting.) Don't you know that——

Mr. Barker (interrupting): Let him finish his answer.

Mr. Folonie: There is no answer to his answer.

The Witness: Well, go ahead.

Mr. Folonie:

Q. Don't you know that quite to the contrary that with a few exceptions that the companies paid their losses at San Francisco dollar for dollar as those losses were suffered?

A. That is not my understanding.

Q. Where did you arrive at any such understanding as you have just mentioned?

A. Well, I couldn't tell you any particular source from which I got it. It was a very firm understanding that I did get.

Q. Did you get it from some manager of a reciprocal fire insurance company?

A. I did not.

Q. Did you get it from General Barker?

A. No.

Q. Or from Mr. Hyde?

A. No, nor from you.

Q. Did you know that the Hartford Fire Insurance Company sold stock to its then stockholders at $500 a share, [fol. 3771] having a par value of $100, to raise the money to pay their losses there dollar for dollar?

A. No.

Q. Did you know they paid them dollar for dollar?

A. I do not know that.

Q. Do you know that the Firemen's Fund Insurance Company paid its premiums dollar for dollar there?

A. I don't know.

Q. Do you know it is a San Francisco Company?

A. I do not know.

Q. Do you know it was in existence before and still is?

A. I do not know.

Q. Do you know that the Home Fire and Marine Insur-

ance Company paid its losses dollar for dollar and assessed its stockholders 1,000 per cent to get the money?

A. I did not know that.

Mr. Barker: Your Honor, I object to that. He says he doesn't know about any of those companies; just a waste of time to ask him about it.

The Referee: Objection overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

The Witness: I would like to answer your questions generally with one further answer, and that is that I do know that at all times since that fire and at all times since other conflagrations that the companies have insisted upon the right and have collected, as I have understood it, what they term a conflagration rate, and that they have at no time ever set that fund aside as a conflagration liability, [fol. 3772] but have turned it into their surplus fund and out of their surplus they have distributed dividends and that they are still insisting upon their right to collect a conflagration rate in addition to a reasonable rate, and are insisting that they shall not set that aside as a liability but shall be free to put that into their funds and use it for dividends or any other purposes they see fit to.

Q. Do you as a lawyer consider that as responsive to any question I have asked you?

A. That is in answer to your questions as to whether or not these stockholders had contributed all of these payments in the Frisco fire.

Q. Do you know that the losses to the companies in conflagrations in the United States, in conflagrations as technically defined in insurance, amounted in the year 1917 to over $25,000,000?

A. I do not.

Q. In 1918 to over $66,000,000?

A. I do not.

Q. In 1919 to over $14,000,000?

A. I do not.

Q. And in 1920 to over $4,000,000?

A. I do not.

Q. And in 1921 to $18,000,000?

A. I do not; and not any other year as to the amounts.

Q. If the companies in the State of Missouri during the period of five years 1917 to 1921 had losses and expenses exceeding the amount of their premium income, would you say that any amount was derived in the State of Missouri to help pay for conflagration in other States?

A. I would say that if in point of fact your statement is true——

[fol. 3773] Q. (Interrupting.) That is what I am asking you to assume.

A. (Continuing:) —and which is what I do not know—that they lost money in this state through their transactions—then I would say that they did not have much left to pay conflagration losses with—if they didn't have any left. That is quite self-evident.

Q. If their premiums were exceeded by the combined losses and expenses for that period they wouldn't have anything to meet conflagration charges, would they?

A. I wouldn't know of anything; they would not, no.

Q. And they wouldn't have anything for profit, either, would they, if that were the case?

A. Not underwriting profit, no.

Q. And was this statute when you helped pass it, did it have the provision in it, do you recall that there should be taken into consideration the conflagration liability within and without the State of Missouri?

A. It did.

The Referee: Mr. Folonie, just one question in the nature of a suggestion—not a question: Assuming the correctness, of course, of your statement that following the San Francisco fire, certain stockholders in certain companies contributed in order that those losses might be paid, at the rate of $500 per share on shares of the par value of $100 and at the rate of $1,000 per share on shares of similar par value, the question suggests itself to my mind, to what fact if they did make such contributions may be attributed the inducing cause?

Mr. Barker: Why, on account of the enormous profits they have taken out of the business.

[fol. 3774] Mr. Folonie: I think that is a perfect answer, judge.

The Referee: The suggestion was not intended to provoke controversy; merely because the thought struck my mind that it was a rather unusual situation, that is all.

Mr. Barker: I know why it is.

Mr. Folonie: I don't know that I can draw from the witness the high sense of honor in the business by any question I can propound to him because it would necessarily take a conclusion on his part and I am unwilling to take a conclusion of this witness on any such subject.

Mr. Barker: Or anything else.

Mr. Folonie: Or anything else.

The Witness: It is all right with me for the gentleman to have that impression, and let the record show that it is quite mutual.

Mr. Barker: Here, too; I join you.

Mr. Folonie: That is all with this witness.

Redirect examination by Mr. Barker:

Q. Mr. Folonie asked you if you dug down into your pocket and contributed anything to the stockholders of those fire companies that had their enormous losses at Frisco, and now I will ask you if you received any of these enormous dividends, 20 per cent, paid to these stockholders in all these companies, from the year 1917 to 1921, as the evidence in this case discloses. Did you get any of those dividends?

A. No, I did not.

[fol. 3775] Q. Now, then, assuming, judge, that the underwriting end of the business takes in all of the money in the fire insurance business, pays all the expenses against it until it is a net total, now instead of turning that money over to the investment end of the business it could place it in a saving bank and receive four per cent on it, could it not?

A. I assume so, yes; invest any way they saw fit.

Q. And could secure something for that money?

A. Yes.

Q. Now, Mr. Folonie asked you to consider a corporation which was doing an electric light business and a power

business and a gas business and as to whether or not you would make the losses of the gas business for instance up on the other electric light business and you told him you would not, but assume that you were called upon to consider the earnings of the corporation that was doing all of these businesses, would you then consider the entire activities of the corporation if you were trying to determine the earnings of the corporation?

A. Well, I would consider the activities of the particular corporation upon whose profits I was going to pass.

Q. You would consider all of its activities?

A. I certainly would. I would consider all the sources of income as to that particular corporation.

Mr. Barker: That is all.

Recross-examination by Mr. Folonie:

Q. And if that company did business with say an interurban line partly in the State of Missouri and partly in [fol. 3776] the State of Illinois and also had funds out at interest on which it received interest returns, then in computing rates properly applicable to the State of Missouri you would take it all into consideration would you?

A. You mean a concern that was doing an interstate business if I was going to fix its intrastate rate?

Q. Yes.

A. That would depend altogether on the statute under which I was operating.

Q. And if the statute authorized you to take into account its profit in the State of Illinois in arriving at a proper rate for the State of Missouri, you as a lawyer recognize that such a statute would be unconstitutional, don't you?

A. I hardly think I would act under that statute if I were a mere administrative officer charged with the duty of enforcing the statute if that statute clearly appeared to me, or to my advisers, my legal advisers, that it was an invalid statute.

Q. Yes, but I am asking your opinion as a lawyer whether you think a statute which authorized and fixed the rates in Missouri on an interurban line running both in Illinois and Missouri, that authorized the rate making body to take

into account the profits on their Illinois business in fixing the rates in Missouri, whether you as a lawyer think such a statute would be constitutional?

A. Well, now, I don't care to give my legal opinion here to you for two reasons: First, because of the reason you put in the record a while ago, and second, because I don't care to be giving promiscuous legal opinions on matters that you merely want my opinion on.

[fol. 3777] Q. Have you in any opinion in such a case as I supposed?

A. I don't care to tell you any opinions on any legal questions and I take it you have no right to ask me my opinion on any such.

The Referee: Proceed, gentlemen.

Mr. Folonie:

Q. How much did you receive as a witness for coming here?

A. Well, now, I should resent that, properly——

Mr. Barker: Oh, but you don't know Folonie.

The Witness: And I may resent that, properly. I want the record to show, however, that I am not even getting my expenses here, unless the Commissioner allows them as a witness. If I am paid as much as my expenses and one dollar a day for my service, I will meet with more than I really expected to get for testifying here. I assure you that I will get nothing more and have no arrangements or understanding, and that such a subject was never mentioned to me. I assume that that question is prompted by your own conception of your treatment of witnesses and your manner of getting them.

The Referee: Avoid personalities, gentlemen.

Mr. Folonie: I think that is all with this witness.

Mr. Barker:

Q. Judge Revelle, I am not asking you and should not ask you anything about interstate railroad matters where you recognized the rule as Mr. Folonie has spoken of, but I am asking you about a corporation incorporated under the laws of Missouri and doing business in Missouri. Now,

let us assume it is incorporated as a bank and that as an incident to the business it has a department where it sells and buys a little real estate. Now, if you were going to [fol. 3778] figure earnings of the corporation, would you consider all the sources of income of that corporation?

A. I certainly would.

Mr. Barker: That is all.

Mr. Folonie: That is all.

(Witness excused.)

Mr. Barker: That will conclude our testimony here.

(Whereupon discussion ensued, after which the following announcement was made by the referee:)

The Referee: Gentlemen, we will adjourn until the 16th of this month, to meet at that time at the office of the referee, 318 Scarritt Building, Kansas City, Jackson County, Missouri.

(Pursuant to adjournment as hereinbefore noted, parties reconvened at the Kansas City Club, in Parlor A, Kansas City, Jackson County, Missouri, Monday, June 16, 1924 at ten o'clock A. M., and the following proceedings were had:)

The Referee: Are we ready to proceed gentlemen?

Mr. Hogsett: If the Court please, plaintiffs ask leave to amend their petition by inserting after page 24 thereof, the matter stated in this printed page.

(Which said printed page so referred to is as follows:)

"Plaintiffs further state that defendant, by his said order of October 9th, 1922, states and finds that the aggregate profits of the plaintiff companies upon their Missouri business during said period from 1917 to 1921, inclusive, [fol. 3779] were in excess of what is reasonable; that defendant in making and arriving at said finding, takes into account $2,801,022(08) of alleged interest earnings on the capital and surplus of said companies prorated to Missouri, and $2,418,596(08) of alleged interest earnings on unearned premium reserves on Missouri business. Plaintiffs state that said alleged interest earnings were from sources other

than underwriting, and were not earnings of the plaintiff companies within the State of Missouri, and were not collected by the plaintiff companies in the State of Missouri. That the defendant's said order, in so taking into account said alleged interest earnings, and each class of said interest earnings, in arriving at the amount of plaintiffs' earnings in the State of Missouri, and in ordering a reduction of rates based thereon, deprives the plaintiffs and each of them of their property and property rights without due process of law, and denies to the plaintiffs and each of them the equal protection of the laws, and is confiscatory, unreasonable, unconstitutional and void, and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, providing that no state shall deprive any person of property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws; and in violation of Section 30 of Article II of the Constitution of Missouri; providing that no person shall be deprived of property without due process of law.

Plaintiffs further state that the defendant by his said order of October 9th, 1922, bases his findings and determination of plaintiffs' alleged profit, during said five-year [fol. 3780] period, upon the amount of premiums alleged to have been received or collected, and the amount of losses and expenses alleged to have been paid, by plaintiffs during said five-year period, instead of upon the amount of premiums earned and losses and expenses incurred by plaintiff companies during said period. That by so doing the defendant by his said order deprives the plaintiffs and each of them of their property and property rights without due process of law, and denies to them the equal protection of the laws, and thereby violates the aforesaid provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 30 of Article II of the Constitution of Missouri.

Plaintiffs further state that the defendant by his said order of October 9th, 1922, states and finds that the expenses of the plaintiff companies during said five-year period were excessive, and defendant by said order undertakes indirectly to regulate plaintiffs' expenses and to force and compel plaintiffs to reduce their expenses, both within and without the State of Missouri, on penalty of

continuing to do business in Missouri at a loss. That the defendant by his said order, and by his attempted regulation of plaintiffs' expenses, unlawfully attempts to exercise visitorial powers over the internal management of the plaintiff companies, and invades the general inherent right of said plaintiff companies to conduct and manage their own affairs; and his said order constitutes an unreasonable and confiscatory interference with plaintiffs' inherent right of management thereof, and thereby deprives plain-[fol. 3781] tiffs of their property, property rights and liberty without due process of law, and denies to them the equal protection of the laws, in violation of the aforesaid provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 30 of Article II of the Constitution of the State of Missouri; and that defendant thereby impairs the obligation of contracts existing between the plaintiff companies and each of them respectively and other persons, firms and corporations, in violation of Section 10 of Article I of the Constitution of the United States providing that no state shall pass any law impairing the obligation of contracts."

The Referee: Have you submitted the amendment to the opposite side?

Mr. Hogsett: Yes, sir; we have given them a copy of it.

Mr. Barker: We object to the amendment because it substitutes a new cause of action, and it is a complete departure from the original petition and injects subject matters which were not contemplated by the parties.

Mr. Hogsett: The answer to that objection is simply that it is not accurate. It is not so. The petition already alleges the following matters: that if the order is enforced the plaintiff companies will either be obliged to comply with the terms of the order and issue policies of "fire, lightning, hail and windstorm insurance upon property in the State of Missouri in compliance with the terms thereof, and write such insurance at an actual loss or cease the writing of fire, [fol. 3782] lightning, hail, and windstorm insurance in the State of Missouri; that if they are obliged, because of said order, to cease writing insurance in the State of Missouri, the various large sums of money expended by plaintiffs in the establishment of their respective agency plants as afore-

said will be wholly lost, and the good will of the business of the plaintiffs and each of them totally destroyed; that in either event the plaintiffs, and each of them would be deprived of their property without just compensation, and without due process of law, contrary to the provisions of the Constitution of the State of Missouri, as guaranteed by Section XXX, Article II thereof, and contrary to the provisions of that portion of Section 1 of the Fourteenth Amendment of the Constitution of the United States which provides that 'No state * * * shall * * * deprive any person of life, liberty or property without due process of law.' ''

The allegations to be added in this amendment are in substance that defendant by his order of October 9th states and finds that the aggregate profits of the plaintiff companies, upon their Missouri business during said period from 1917 to 1921, inclusive, were in excess of what is reasonable, and that defendant in making and arriving at said finding takes into account $2,801,661 of alleged interest earnings on the capital and surplus of said companies pro-rated to Missouri, and $2,418,596 of alleged interest earnings on unearned premium reserves on Missouri business. That the defendant's said order in so taking into account said alleged interest earnings, and each class of [fol. 3783] said interest earnings, in arriving at the amount of plaintiffs' earnings in the State of Missouri, and in ordering a reduction of rates based thereon deprives plaintiffs, and each of them, of their property and property rights without due process of law. In other words, we are now simply making specific what we have heretofore alleged in general form.

The same allegations are made with respect to the method of computing profit or loss upon an earned or paid basis, and we allege in the third paragraph of the amendment that by defendant's attempted regulation of expenses he exercises visitorial power over the internal management of the companies in violation of the same provisions; so that in no respect do we go beyond what has already been alleged in the petition in general form.

The Referee: Objection overruled.

Mr. Barker: Note an exception.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

The Referee: And leave is given to amend as requested.
Mr. Barker: Call Mr. Chorn.

Walter K. Chorn, was thereupon called as a witness on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Barker:

Q. Give the stenographer your name.
A. Walter K. Chorn.
[fol. 3784] Q. Where do you reside, Mr. Chorn?
A. Kansas City, Missouri.
Q. Were you at one time connected with the Missouri Insurance Department?
A. I was, yes, sir.
Q. When did you enter that department?
A. I think it was in August, 1915. I don't know the exact date. I am not certain of that. I would have to look it up, but about that time.
Q. Was that your first entry in the department, or was that when you became superintendent of it?
A. That is when I became superintendent.
Q. When did you first enter the department?
A. In January or February, 1912, is my recollection.
Q. 1913?
A. I mean 1913, yes, sir.
Q. What was your position with the department when you first entered it?
A. Actuary for the Insurance Department.
Q. How long did you remain actuary?
A. Until August, 1915. I think August. I would have to look that up.
Q. What position did you take then?
A. Superintendent of Insurance for the State of Missouri.
Q. How long were you Superintendent of the Insurance Department in Missouri?
A. My recollection is March, 1918.
Q. From some time in August, 1915, to March, 1918?

A. Yes, sir.

Q. What is your business now, Mr. Chorn?

A. Lawyer.

[fol. 3785] Q. Are you in the insurance business?

A. No, sir, not directly.

Q. With whom are you associated in Kansas City?

A. Mr. Charles M. Howell.

Q. Do you have in your association insurance companies?

A. Yes, sir.

Q. What kind?

A. We represent a great many—a number of reciprocal exchanges, and we represent several stock companies.

Q. Fire stock companies?

A. Fire, casualty and life.

Q. Were you in the department when the Missouri Rate Act of 1915 became a law?

A. Yes, sir.

Q. After that time, and particularly during the time you were Superintendent of the Insurance Department, did you come in contact with fire stock companies and their representatives in the state interpreting that law?

A. Yes, sir.

Q. Was an application made that you remember of while you were superintendent of the department for an adjustment of rates in Missouri?

A. Yes, sir.

Q. Did you have negotiations with the fire stock companies and their representatives at that time?

A. Yes, sir.

Q. What manner did you negotiate with them for an adjustment rate, and on what basis?

Mr. Folonie: We object, if the Court please, on the ground any rate changes are properly to be proven by the record and not by the testimony of this witness, and that any negotiations not culminating in such rate changes are improper of proof.

[fol. 3786] Mr. Barker: We want the negotiations and not the result.

Mr. Hogsett: May I ask the witness when that was, and what was the date?

The Witness: I should say 19—my recollection is—Mr.

Hobbs probably remembers better than I do. I should say the application was filed in October or November of 1915 and passed on in 1916, some time.

Mr. Folonie: Then we add to the objection the fact it is wholly foreign to any issue involved here because it was two years prior to the period involved here; and for the further fundamental reason that negotiations between the companies on the one hand and the witness on the other can not throw any light whatever upon a legal construction of the rating act, that being the function of the court, and the court not being bound by the attitude or position taken by either side in negotiations.

Mr. Barker: Our answer is——

The Referee: Overruled.

Mr. Barker: Read the question.

(Question read by the reporter.)

Mr. Barker: You may answer.

Mr. Folonie: May we add to that the further objection that the negotiations referred to in the question partake in their nature of the essence of compromise, and that, therefore, it would be improper for the court to receive evidence of the position of either party in such negotiations.

Mr. Leahy: The ultimate result would be the only matter that would be competent, and that could not be proven by the witness.

[fol. 3787] The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness:

A. The negotiations were begun, as I say, I think it was October or November, some time, in 1915; I may be mistaken about the exact time. I have never looked it up since. Application was made for a re-adjustment of rates and for an increase in rates. Tables were prepared.

I held several conferences and hearings at the office of Mr. Jack Parker at Chicago and at the Rating Bureau in St. Louis and at the office of the Superintendent of Insurance

in Jefferson City, Missouri. Finally, after a complete analysis on the basis of premiums written and expenses and losses paid, I came to the conclusion that they were practically justified in what they asked, and that at a conference in Chicago later, the exact date I don't remember, I advised them that their application would be approved and it was approved and put into effect.

Mr. Folonie: Maintaining all our grounds of objection to the question, we move to exclude that portion of it that it was put into effect as not responsive, in addition to all the grounds of objection urged to the question.

The Referee: It is not responsive. Sustained.

Mr. Barker:

Q. During the negotiations with the fire stock companies [fol. 3788] and their representatives, what position did they take in making their application under the rate act with reference to a written basis or otherwise?

Mr. Folonie: We object on the ground it calls for a conclusion, that it is incompetent, that no identity of parties is established; that the same is not shown to be any matter properly to be received as any admission; that the same is anterior to the period here in question, and therefore incompetent, and that no estoppel could arise by any kind of a basis adopted by other parties at a different time, and not relating to the period here in question; and further, upon the ground that the statute fixes the proper measure, and therefore any supposed agreement or settlement of the parties would be incompetent because in contravention of the statutory rule and provision.

The Referee: Sustained on the ground that it calls for a conclusion of the witness.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. I am not asking you for any conclusion, Mr. Chorn, but asking you only for a statement. What statement did the representatives of all the fire companies in the state at that time make to you during your negotiations with

reference to whether or not the statute should be interpreted on a written basis or otherwise.

Mr. Folonie: We renew the same objection made to the preceding question upon the same identical grounds.

{fol. 3789} The Referee: Overruled.

Mr. Leahy: It presupposes they spoke in chorus.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Barker: Answer.

A. There was no other theory or no other scheme for rate-making advanced except on the written basis and premiums paid and losses paid.

Mr. Folonie: I move to strike out the answer.

Mr. Barker:

Q. You mean premiums paid and losses paid?

A. I mean losses paid and expenses paid.

Mr. Folonie: I move to strike out the answer upon all the grounds urged in objection to the question, and in addition on the ground it is not responsive, and it is a conclusion and not binding upon the plaintiffs.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Not asking for your conclusion, Mr. Chorn, but for the fact. What statements did they make and on what basis did they ask for an increase?

Mr. Folonie: We object to it on all the grounds urged in the objection to the last preceding question and upon the additional ground it is a reiteration.

The Referee: Overruled.

[fol. 3790] (To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness:

A. The application was made on the basis of premiums received and losses paid and expenses paid.

Mr. Barker:

Q. Were the whole negotiations conducted between you and all the representatives of the companies on that basis?

Mr. Folonie: Same objection, and on the ground it is leading and suggestive.

The Referee: It is leading.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Barker:

Q. Was there any other basis suggested by the representatives of the fire stock companies than the basis you have stated?

A. No, sir.

Q. During the time you were in the department, superintendent thereof, what was the departmental interpretation of the Rating Act with reference to whether or not the rates should be fixed on a written basis and a losses paid and expenses paid basis, or otherwise?

Mr. Folonie: We object on the ground it calls for a conclusion, that it is anterior to the period here in question, and does not relate to the subject matter here in controversy; and upon the additional ground that any ruling or method of reasoning adopted by the department, or anything inherent to the department itself, would in no wise be binding upon the plaintiffs, and that such departmental [fol. 3791] construction if adopted is improper of proof because it is self-serving.

Mr. Hogsett: For the further reason that the rule under which departmental rulings are sometimes admitted could

not be applicable in a case where the department itself is a party; obviously one party cannot by its rulings settle or cause the court to adopt a given construction of a statute.

The Referee: When was the present act adopted?

Mr. Barker: 1915.

Mr. Hogsett: In 1915. This witness in his position as Superintendent of Insurance is, of course, the same officer as the defendant now in this case. A mere change in personality does not change the fact this is the defendant or former defendant—witness, rather, who occupied the position of defendant; he is on this stand and he is now asking this witness to say what his interpretation of the Rating Act was.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness:

A. It was on the basis of premiums written and losses and expenses paid.

Mr. Barker:

Q. Tell the court whether or not that interpretation during the time you were superintendent of the department was concurred in by the representatives of all the fire stock companies doing business in Missouri or otherwise.

[fol. 3792] Mr. Folonie: Object on the ground it calls for a conclusion; that it assumes identity of parties which this record already discloses could not be possible because many of the parties plaintiff here have entered the State of Missouri since that time, and many of those who were entered in the state at the beginning of this period have dropped out; on the ground that it calls for a wholesale conclusion of the witness; that a supposed concurrence or nonconcurrence calls for the interpretation of conduct and acts of 150 more or less insurance companies; that there is no proof that there was common representation of those companies before him at any time, or the authorization of those supposed representatives, and that it is anterior to the period here in question and not related to it, and that it

contravenes the method of calculation set up and provided by the statute.

The Referee: Sustained on the ground it calls for a conclusion of the witness.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Mr. Chorn, during the time you were Superintendent of the Insurance Department, and considering the interpretation which you have just placed upon the act, what objections, if any, were ever made by the representatives of all the fire stock companies in their negotiations with your department——

Mr. Folonie (interrupting): Same objection.

Mr. Barker:

Q. (Continuing:) —with reference to adopting the premiums written basis and the losses and expenses paid basis?

[fol. 3793] Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness:

A. Never heard any.

Mr. Barker:

Q. Mr. Chorn, aside from the departmental ruling of your department while you were superintendent, tell the court if you are familiar with what is known as the written or premium received basis for rate-making purposes of fire insurance companies in Missouri as distinguished from what is called the earned premium basis and the incurred loss and incurred expense basis.

A. I am reasonably familiar with it, yes, sir.

Q. During the time you were superintendent, what occasion, if any, did you have to study the fire insurance situation with reference to rate-making in Missouri?

A. I had every occasion to study it because of putting into effect the rating act, which was adopted in 1915.

Q. 1915?

A. Yes, sir.

The Referee: Did you in fact make a study of it?

The Witness: I did; yes, sir.

Mr. Barker:

Q. What books, magazines and papers have you read on the subject?

A. Well, I suppose I have read practically everything current and a great many other works during that time like Martin & Price on Insurance, E. A. Yale on Insurance, and a great many others.

[fol. 3794] Q. Did you have occasion to have conferences and discuss the matter with the representatives of the fire stock companies in Missouri?

A. Yes, sir; I did.

Q. What is your idea, Mr. Chorn, as to whether or not the premium received basis or the earned premium basis is the proper basis for figuring underwriting profit or loss in Missouri?

Mr. Folonie: We object on the ground the witness has not been qualified.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. I think the premium written basis is the proper basis.

Q. Why?

Mr. Folonie: Same objection to the entire line of inquiry depending on his previous answer.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

A. On the earned premium basis unless you have an exhaustive study of the situation and a large—practically state-wide and nation-wide body to look after the situation you would be in the same situation that you would be in casualty insurance writing Workmen's Compensation. There is a fluctuation of premiums. If you take into consideration the unearned premium at the beginning of the period, and the premiums received or written are on a rise, that is, are on an increase, you will have a great deal more [fol. 3795] unearned premiums at the end of the period than you will have at the beginning of the parties, and expenses at the end of the period are charged back of that period, and in that event it would work to the detriment of the department and the public of this state. On the other hand, if it was on a decreasing basis, it would work just the opposite, and would be unreasonable, unfair and unjust to the companies.

Mr. Barker:

Q. Now, assuming that in the beginning of this period in question there were substantially eight million dollars of unearned premiums, would or would not the expenses have been paid on those unearned premiums?

A. At the beginning they would have been paid in the preceding period; at the end they would be paid during the period in controversy.

Q. Assuming that at the end of the period the unearned premiums had increased to substantially $16,000,000——

A. (Interrupting.) Eight million in the beginning?

Q. Yes. (Continuing:) —and assuming a forty per cent expense ratio on that $8,000,000 of unearned premiums at the beginning of the period. The forty per cent would have been paid for the expenses on that eight million dollars?

A. Yes, sir.

Q. That forty per cent of $8,000,000 would be $3,200,000?

A. Yes, sir.

Q. Now, the state would get credit on an earned premium basis for the expenses paid prior to the period?

A. Yes, sir.

[fol. 3796] Q. Now, assuming the same expense ratio of forty per cent was incurred during a five-year period as against $16,000,000 unearned premiums at the end of the

period; the expenses paid would be $6,400,000 during that period?

A. Would be just twice as much——

Q. (Interrupting.) As $3,200,000?

A. Yes, sir.

Q. Would be $6,400,000?

A. Yes, sir.

Q. Now, if the state received credit at the beginning for the $3,200,000 paid in expenses, and was charged during that period with $6,400,000 paid during that period, it would be to the detriment of the state to the extent of $3,200,000?

A. Yes, sir.

Q. Now, assuming, Mr. Chorn, that a condition should arise wherein at a certain period, on account of unusual and extraordinary depressions, and considering the earned premium basis the companies had $16,000,000 of unearned premiums at the beginning of the period, and had paid expenses as against that at a forty per cent ratio, amounting to $6,400,000; assuming that on account of decreased business the unearned premiums at the end of the period were only $8,000,000; the state would be charged during that period with the abatement only of the expenses, which would be $3,200,000?

A. Yes, sir.

Q. That would work to the disadvantage of the companies to the extent of $3,200,000?

A. Yes, sir.

Q. Your idea is that that is not fair to the companies to figure on that basis?

A. I do not think you could work it out on that basis at all; that is, with any degree of satisfaction.

[fol. 3797] Q. Now, then, Mr. Chorn, what has been the experience in this country in the past twenty years, if you know, as to whether or not there has been a gradually increased premium volume or a decreased premium volume?

A. Why, I should say there has been almost a uniform—with the exception of periods of deflation and war period—increase.

Q. What will be the tendency in the future as the years go by, in your judgment, as to an increased premium volume or a decreased premium volume?

A. Very naturally would be increased.

Q. Are you familiar with the reported profit or loss of fire stock insurance companies throughout the United States on an earned premium basis for the past twenty years?

Mr. Hogsett: Objected to for the reason it is calling for secondary evidence.

Mr. Folonie: On the ground the witness is not qualified.

Mr. Barket: If he knows.

Mr. Folonie: He is asking one witness in one answer about the giving of a report. Now if it is a report, it is a report in writing and he is calling for him to give that, and that is secondary evidence.

Mr. Barker: That is a matter of general knowledge.

Mr. Folonie: Is it? When did that become so?

The Witness:

A. If I answer the question, it would have to come in two ways; one is by first hand knowledge of what has been [fol. 3798] said to me by officers of the companies and which was testified to at a hearing recently the other would be a compilation reported by, I think, the Eastern Underwriter, or I think one of the eastern insurance magazines which makes this compilation.

Mr. Folonie: We add to the objection that on the showing of the witness himself it is not only secondary but in part based on hearsay.

Mr. Barker:

Q. It is a matter of general and common knowledge throughout the United States as to the profit or loss of fire stock insurance companies?

Mr. Folonie: We object to taking this witness' conclusion as to what is common or general knowledge, if the court please, as incompetent, and a conclusion.

Mr. Hogsett: Can't prove matters of this sort by common rumor or common understanding of general knowledge. It is not a fact which falls within that category at all.

The Referee: Read the original question, Mr. Blume, please.

(Question read by the reporter.)

The Referee: Objection overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. Yes, sir; I am.

Mr. Barker:

Q. What is it?

Mr. Folonie: Same objection to that as to the preceding question, that it is incompetent, calls for a conclusion, based on hearsay, not the best evidence, and the witness not qualified.

[fol. 3799] The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. Less than one-half of one per cent.

Mr. Barker:

Q. On a generally ascending scale of business, Mr. Chorn, where the premium volume increases each year, will that tend to show the true condition as to underwriting activities or not?

Mr. Folonie: Object on the ground the witness has not been qualified, and incompetent.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. Why, on a generally ascending basis we—Please state that question again.

Mr. Barker: Read it.

(Question read by the stenographer.)

A. I do not think it will, no.

Mr. Barker:

Q. Now, on a decreasing premium volume as the years go by, will that tend to show on an earned basis the real activities of the companies?

A. No, sir.

Mr. Folonie: Same objection.

The Referee: What would tend to show?

Mr. Barker: The decreasing premium volume as distinguished from the increasing premium volume.

The Referee: You say if that would tend to show—I didn't clearly understand the question?

[fol. 3800] Mr. Barker:

Q. Will the fact that there is a decreasing volume, will that fact tend to reflect the true activities of the insurance companies?

Mr. Folonie: Same objection.

The Witness: You mean underwriting activities for rate-making?

Mr. Barker: Yes, sir.

A. No, sir; it will not.

Mr. Barker: I believe that is all, Mr. Folonie.

Cross examination by Mr. Folonie:

Q. Mr. Chorn, what was your first entry in any way, except in the capacity of lawyer, with the insurance—fire insurance business?

A. I was Actuary for the Missouri Insurance Department from 1913 until some time in 1915.

Q. And by "Actuary" you mean what, please?

A. Well, in the common acceptation it meant the officer or appointee who handled the figures with reference to all classes of insurance. That was the common acceptation and it further, of course, meant figuring the reserves for life companies under our law and the checking of annual statements, etc.

Q. Is that the position that Mr. Perry Spencer held with the department?

A. I couldn't tell you that, sir; I believe it was, though.

Q. Well, do I state it with general accuracy when I state that the position of Actuary is a compiler——

A. What?

[fol. 3801] Q. (Continuing:) —an Actuary is a compiler of statistics and figures in the department?

A. Well, technically that is true, and that is the duty of the Actuary of the Missouri Insurance Department.

Q. Did you in your capacity as Actuary with that department formulate insurance theories of practice, or did you simply compile figures as they were brought to you and as they were filed by the companies?

A. Well, I should say that yes or no. If it related to a policy and that policy dealt with the figures of the companies, as a general rule, why then, yes; and if it was just merely a compilation, no.

Q. You became Insurance Superintendent in the year 1915, did you?

A. Yes, sir.

Q. And remained in that office until when?

A. About 1918 is my recollection; March, I believe.

Q. Who succeeded you?

A. There was an interim in which Mr. Clark was superintendent for, I should say two or three months, and then he was succeeded by Mr. Hardy, A. L. Hardy.

Q. After you left the Insurance Superintendent's office, what were your activities in connection with fire insurance from that time forward?

A. None in particular except in a general way as counsel for some of them.

Q. I mean, aside from those of a lawyer having some insurance practice, aside from that did you have any connection with any insurance company as an executive or——

A. (Interrupting.) You mean fire insurance company?

[fol. 3802] Q. Fire insurance.

A. No, sir.

Q. Or any relation in an official capacity which would bring you in contact with it?

A. No, sir.

Q. Now, when you were Insurance Superintendent of the State of Missouri, did you send out annual statement blanks to the various fire insurance companies doing business in the state for their return to you?

A. Yes, sir.

Q. In your capacity as Insurance Superintendent, did you supervise the printing and preparing of those so called annual statement blanks and have them sent to all the various companies doing business in the state?

A. Yes, sir; that is the duty of the superintendent.

Q. And required those blanks to be filled in and returned by the companies and filed with you as a condition of doing business in the state?

A. Yes, sir.

Q. Now, I show you an exhibit, which is plaintiff's Exhibit Number 1, being an annual statement blank of a year different from that when you were Insurance Superintendent.

A. It is practically the same.

Q. Call your attention to page 10, styled "Underwriting Exhibit," and reciting premiums and formula for computing the earned premium and the losses, and leading through a computation to incurred losses and expenses, leading to a computation of incurred expenses, and then the balance the question of loss from underwriting, offsetting earned premiums by incurred losses and expenses. Was there a page virtually identical with that in the annual statement blank during your time?

A. There was. It is what is known as underwriting profit and loss exhibit.

[fol. 3803] Q. So that the earned premium method of calculation, as applied to the national experience of each company, came to you each year you were superintendent, did it not, on the basis of earned premium incurred, losses and incurred expenses in this blank?

A. Yes, that blank came.

Q. So that basis of calculation was not unknown to you when you were Insurance Superintendent?

A. It was unknown to me from the standpoint of rate-making.

Q. Now, the underwriting exhibit, so styled here, what did you understand by the term "underwriting" as used on page 10 of this blank?

A. That means that premiums—that is, if you follow it further, it means the question of whether or not you—on the question of underwriting profit and loss would be the question of whether or not you made any money strictly on

underwriting as distinguished from banking profit, and so forth.

Q. What do you mean by "underwriting" as you use the term here on page 10 of the annual statement? What does the word "underwriting" mean?

A. Let me have your exhibit.

Q. The word "underwriting" is what I am directing your attention to.

A. "Underwriting" means—generally taken to mean premiums; that is exactly what it means. Underwriting in its common acceptation means the premium end of the business only as distinguished from the banking end of it——

Q. (Interrupting.) In other words——

A. (Continuing:) —and the investment end.

[fol. 3804] Q. In other words, it is strictly the insurance end of the business rather than the investment end of the business?

A. Absolutely, strictly the premium end of it and nothing else.

Q. Well, when you say the premium end, you mean also the losses and expenses which relate to insurance as an element in arriving at your underwriting experience?

A. That comes from the premium itself and nothing else.

The Referee: By "underwriting," do you mean the business of insurance?

The Witness: It is a part of the business of insurance, Judge; if you please——

The Referee: Excludes the idea of the investment features of the business as practiced by the companies?

The Witness: Yes, sir.

The Referee: Relates solely to the conducting and handling of insurance risks?

The Witness: Of insurance premiums, and it is commonly accepted as a term which applies to insurance premiums.

Mr. Folonie: I will develop my thought on this a little bit by some questions.

Q. Now, under "Premiums" on this blank at page 10 it provides first for "Total premiums;" item 2, "Add unearned premiums Dec. 31, 1920," this being a 1921 blank?

A. Yes, sir, I am familiar with it.

Q. "3 Total. 4. Deduct unearned premiums Dec. 31,

1921. 5. (In caps:) PREMIUMS EARNED DURING 1921," being the difference between the unearned premium [fol. 3805] at the end and the previous addition of unearned premiums at the beginning, and total premiums written during the period. Now, if this blank were filled out as was required, that would give the earned premiums if the figures were correctly put in here for the year 1921 of the given company, would it not?

A. I assume that it would.

Q. Now, beneath that appears the caption, "Underwriting profit and loss items. Gain from Agents' balances previously charged off." That correction, I assume, arises out of the fact that under your Departmental requirements agency balances over ninety days old were not permitted to be shown in their previous years' statements and after they were subsequently collected they would show them as collected?

A. They are shown as non-admitted assets if more than ninety days past due.

Q. Now, your next caption on this page is "Losses paid, Deduct salvage and reinsurance recoverable Dec. 31, 1921, Add salvage and reinsurance recoverable Dec. 31, 1920, Deduct unpaid losses Dec. 31, 1920, Add unpaid losses Dec. 31, 1921, Losses incurred during 1921." Does that outline the method of computing incurred losses as it was done in the blanks that you prescribed during the time you were Insurance Commissioner?

A. That was done for that particular purpose only.

Q. I say, was that the way it was done in your blank?

A. For that particular purpose, yes, sir.

Q. Under "Underwriting expenses" there appears, "Underwriting expenses paid during 1921," "Deduct under- [fol. 3806] writing expenses unpaid Dec. 31, 1920," "Add underwriting expenses unpaid Dec. 31, 1921. Result: "Underwriting expenses incurred during 1921."

Now, was that same formula in the same way used substantially while you were Insurance Superintendent?

A. That is changed from year to year, Mr. Folonie, by the Committee on Blanks of the Insurance Commissioners, but I should say it is substantially the same thing.

Q. Yes. I am not meaning to hold you to the word for

word language here, but I mean in substance that was the one that was used during all of your time?

A. Yes, for the purpose of a gain and loss exhibit, that is true.

Q. Then you have combined "Underwriting losses and expenses" deducted from your earned premiums, and then you have here, "Item 29 (b). (b) Write 'Gain' or 'Loss,'" being a blank to put in the word "Gain" or "Loss" "from underwriting during 1921." Was that substantially the way that page was summarized when you were Insurance Superintendent?

A. Yes, sir, absolutely, precisely that is.

Q. Now, what was this form of annual statement commonly known as, in common parlance as it was used in the various states? How was it styled and called?

A. Gain and loss exhibit.

Q. No, I am talking about the blank as a whole.

A. Annual statement.

Q. Wasn't it known as convention form of annual statement?

A. No, I could not say that because there are changes in there. It is substantially though, the convention form. [fol. 3807] Q. I am not talking about minor differences in one exhibit and another; but the general character of the instrument was known as the convention form of annual statement, was it not?

A. Well, I could not say. We didn't use the convention form, but it was substantially the same. A lot of the states used the convention form and some of them would not use anything like the convention form, and others used substantially the convention form. We used substantially the convention form.

Q. Now, will you state any state in the Union in the years you were Insurance Superintendent that did not use pages 10 and 11, underwriting exhibit and investment exhibit, substantially as prescribed in the convention form of annual statement?

A. No, I could not offhand.

Q. Well, don't you know as a fact it was in universal use in all the states of the Union at the time you were Insurance Superintendent so far as those pages of underwriting exhibit and investment exhibit were concerned?

A. It is somewhat like them, I should say, that they practically used—I think that is pages 10 and 11, isn't it?

Q. Beg pardon?

A. Isn't that pages 10 and 11?

Q. Yes.

A. I think they did.

Q. And it is called the convention form because it was adopted by the Convention of Insurance Superintendents and recommended by them to the various states as a proper and convenient form in the interest of uniformity in the business?

[fol. 3808] A. Well, it was drawn by a committee of actuaries appointed by the Insurance Commissioners representing the various departments.

Q. Did you attend the Insurance Superintendents' conventions during the time you were Superintendent?

A. I did, yes, sir.

Q. Do you recall who were the officers of the convention during that period?

A. Well, with a little thought I guess I could tell you for the last ten years. The Commissioner of Connecticut was followed by Jess Phillips, the Commissioner of New York, who was followed by, I think—well, I have forgotten who did come in there, but——

Q. (Interrupting.) You need not trouble yourself particularly.

A. (Continuing:) —with a little thought I could probably figure the whole thing out.

Q. It is not of enough importance to pursue it any further. These Insurance Superintendents, how many states were represented in that convention by membership? Did it cover the entire United States?

A. Yes, it is supposed to; I should say there were probably on an average of 25 to 30 present at a convention.

Q. And the membership would be about how many?

A. 48; and also including, in addition to that the Territory of Hawaii—he sometimes came—Alaska and Porto Rico.

Q. What about the District of Columbia?

A. The District of Columbia, yes, that is in, too, and the Canal Zone is included in that, too.

Q. 1918 is when you left the Department?

A. March, 1918, I think, Mr. Folonie.

[fol. 3809] Mr. Folonie: May I have a few minutes recess?

(Whereupon a short recess was taken, whereupon the following proceedings were had:)

The Referee: Are you ready to proceed, gentlemen?
Mr. Folonie: Yes, if the court please.

Q. Directing your attention, Mr. Chorn, to the element of or theory of adoption of the incurred loss basis: you recognize, do you not, Mr. Chorn, that the only item which is eliminated from the paid loss item in arriving at an incurred basis is the outstanding unpaid losses at the end of the period you are computing, isn't that correct?

A. You ask me a question I would not like to answer yes or no. On the incurred loss basis you take into consideration the incurred unpaid losses.

Q. I am just directing your attention to the incurred loss feature now. The only thing which you eliminate out of your paid losses for a given period in arriving at the incurred loss basis is the outstanding unpaid losses at the end of the period, isn't that so?

A. You mean in distinguishing between the incurred basis and paid basis?

Q. Yes, or in computing the incurred losses?

A. In computing on the incurred loss basis you take into consideration the unpaid losses at the beginning and which are paid during the period, and add to the period the incurred losses to the unpaid at the end of the period.

Q. Well, now, I think you mis-stated it a little bit. Let me re-state it and see if this is not technically correct. Now, if you take the actual paid losses during the period——

A. (Interrupting.) Yes, sir.

[fol. 3810] Q. (Continuing:) —and deduct from them the unpaid losses at the end and add in the unpaid losses at the beginning.

A. That is what I stated.

Q. Now, the result of so doing is to eliminate from those losses which you are considering for the period those which happened during the previous period but were paid during the present period; you eliminate those from your equation, do you not?

A. Yes, sir.

Q. And you include in your equation those which have not yet been paid but which have been suffered during the period in question?

A. Yes, sir.

Q. Now, do you recognize the fact that those unpaid losses at the end of the period are almost entirely losses occurring within the last ninety days of the period?

A. Well, we have a lot in suit there.

Q. Well, isn't it a fact that the great bulk of that unpaid loss item is of losses which occur in the last ninety days of that period?

A. If you eliminate those in suit and just report which may go to suit, I would say that is absolutely correct.

Q. Now, have you ever made any computation of those in suit to know what percentage or proportion they are of the losses paid?

A. I haven't, no, sir.

Q. Would you think that would be as much as one-tenth of one per cent of a five-year loss record?

A. Yes, sir, I would think the ones reported unsettled and probably go to suit, or probably result in settlement without going to suit, would be a great deal in excess of that.

Q. More than ninety days old?

A. Yes, sir, I would.

[fol. 3811] Q. Now, to get at the incurred expense item, do you think there is any substantial part of the expense item which is taken into account in the incurred basis because of the fact that there—expenses have been incurred but not yet paid, is there any material part of that except for the last sixty or ninety days of a given period?

A. No substantial part of it, no.

Q. Now, so far as your premiums are concerned, in making a computation upon the earned basis, if you were going to have your premiums—your unearned premiums at the beginning of a five-year period $8,000,000 and at the end of a period $17,000,000——

A. (Interrupting.) Make it sixteen for easy, simple computation.

Q. Sixteen for simple computation. It will serve the purpose just as well. I was taking more exact figures but

it will serve for illustration. Have you seen any of our figures in evidence? You haven't seen them, I suppose?

A. No, sir, I have not seen them and I haven't talked to any one about it.

Q. You know from your experience, do you not, that if the unearned premium item jumps from the beginning of a five-year period from eight million dollars to sixteen million, that it means that there was a large volume of business written during the five-year period?

A. Yes, sir, I do; at least it would indicate that.

Q. In other words, your unearned——

The Referee (interrupting): Pardon me. Might be a largely increased volume of business.

The Witness: Isn't that what I said?

Mr. Folonie: No, a large volume during the five years. [fol. 3812] The Witness: A large increased volume. I misunderstood you on that.

Mr. Folonie:

Q. Well, even though it ran exactly the same from year to year during that period, it would indicate a large volume of premiums written in the five years, would it not?

A. I can't say.

Q. I will get at the increase feature of it a little later. It would indicate a large volume of premiums some place in the five years, would it not?

A. You mean on the basis of eight to sixteen million?

Q. If it grew eight million to sixteen million for the five years?

A. I would say it would indicate there was a considerable volume of business written, yes, sir.

Q. Now, that, as dependent on how much of it was written during the early years or late periods of that period and how much effect that would have would depend upon the term of the business, more or less, would it not?

A. Yes, sir.

Q. I mean, the more five-year business there was in it, as distinguished from one-year business, the further back that could go from the end of the period back—in going backward to see where your premiums were derived?

A. That would be all right if you did not write too much of your five-year business earlier in the period.

Q. Yes. So that entirely aside from the volume of premiums from year to year, it also has another element, namely, the amount of term business, or three and five-year business written?

A. Yes; bound to consider that.

[fol. 3813] Q. Now, if your unearned premiums at the beginning were eight million and the written premiums during the period were eighty-three million—or we will take it eight million to give you a little more round numbers?

A. Yes.

Q. That eighty million dollars would be productive of—on the earned premium basis—of an earned premium and an unearned premium, would it not?

A. Yes, sir.

Q. And the greater the volume there would be the greater would be the earned premium and the unearned premium? In other words, if you would double the volume you would expect to have a larger earned premium and a larger unearned premium, would you not?

A. Well, I could not say that would be absolutely true. Generally that would follow.

Q. In other words, when a policy is written and if you are adopting the earned premium basis, that premium upon its receipt—or rather, upon its writing, consists of two parts immediately, an earned portion and an unearned portion, is that true?

A. No, sir, that is not true.

Q. Now, why is it not true that immediately upon the writing of business which extends beyond December 31st of the year during which it is written, why is it not true that there is immediately an earned and an unearned portion of that premium whether the premium has been received or not—if you are adopting the earned premium basis?

A. You may not state what you have in mind. There could not be anything earned at the exact time the pre-[fol. 3814] mium was written because the law of the state says it must be fifty per cent of the unearned premium. If it was for a longer period how could you estimate it?

On a three-year basis, and it had run one month, you would have earned 1/36th, and the unearned would be 35/36ths. That is on a monthly basis. If it ran for six months you would have 6/36ths. If it ran one year you would have 12/36ths.

Q. Well, on December 31st of the year during which the premium was written and assuming that the policy had not yet expired, whatever its term, whether one year, three years or five years——

A. (Interrupting.) Written on December 31st?

Q. No, written during the year prior to December 31st of the year.

A. Yes.

Q. Also at December 31st, in making up your reports to the state, immediately have on that date an earned and an unearned portion of that particular premium, would you not?

A. Yes, sir, you would.

Q. And you could compute the earned and unearned premiums policy by policy if you saw fit, could you not?

A. Yes, that is the only way that you could do it, and for that reason it is impractical as I see it.

The Referee: What is impractical?

The Witness: To take each policy, policy by policy. You see, what is done, Judge, you take it on a mean basis, that is, they assume that half of it is written this first part of the year, and half the last part, and half of it runs off on an annual basis, and so June 30th is just fifty per cent. That is purely arbitrary.

[fol. 3815] The Referee: Is this what you mean, that in order to reach an absolutely correct result you would have to make a calculation upon each policy and make all the calculations on all of the policies simultaneously?

The Witness: Yes, sir, that is what you would have to do.

The Referee: And that because of the multiplicity of policies that is impracticable?

The Witness: Just couldn't be done.

Mr. Folonie:

Q. And because of the fact that that would be a practical impossibility to do and to require of the companies

the method of calculation shown in the annual statement blank was adopted by the Insurance Superintendents as reasonably approximating the earned and unearned part of the premiums?

A. That was done for the purpose of ariving at an approximate reserve. That is put on a reserve basis entirely.

Q. Yes. Now, if the policies during the year are written substantially fifty per cent before June 30th and fifty per cent after June 30th during the year, then the basis of calculation by taking fifty per cent on December 31st would come out right, wouldn't it?

A. Approximately correct, yes, sir.

The Referee: Does not that involve also the idea of the number of policies but of the amount approximately?

The Witness: Of course, you have to take all those things into consideration. If there is a big increase at the last, of course you are off; or if there is a big difference between the last and first part of the year you are off. It is [fol. 3815a] more or less of a guess, just as near as you can come at it.

Mr. Folonie:

Q. And though such variations as big writings at one period of the year and smaller ones at another period of the year might exist company by company, when you combine them for all companies don't you think that it approximates exactness as near as is practicable to take them on the basis set up in the annual statement?

A. I think for reserve purposes it is close enough.

Q. Do you know any better method of calculating it, practically?

A. No, sir. If I did, it would be in that statement there, but there isn't any. They have tried to figure a lot of ways on that but they all got back to the same thing.

Q. Are you familiar with the action of the National Convention of Insurance Commissioners at a meeting held about December 7, 1921, in which they adopted the report of the Fire Insurance Committee of the National Convention of Insurance Commissioners?

A. Yes, sir, I am.

Q. I haven't the exhibit number, Dick, do you know what it is?

The Reporter: No, sir, not without reference to the record.

Mr. Folonie:

Q. I haven't at this moment the exhibit here in evidence—we have put one in evidence here, but I have a duplicate of it and it is the exhibit which I am not now able to refer to by number but which is styled, "Report of the Fire Insurance Committee of the National Convention of Insur- [fol. 3815b] ance Commissioners, approved and adopted December 7, 1921"——

A. (Interrupting.) Yes, sir.

(Witness examines document.)

Q. I just want to show it to you to see whether this is the instrument that you said you were familiar with so we will be talking about the same thing. Having looked through the instrument I handed you—this is the action of the convention you say that you are familiar with?

A. Without having read it carefully, Mr. Folonie, I should say it was.

Q. Now, I will ask you whether you are familiar with the action of that convention in this particular: point 1 at page 2, "Underwriting profit or loss is arrived at by deducting from earned premiums all incurred losses and incurred expenses." Are you familiar with their action in approving of that?

A. In a general way, yes, sir.

Q. And do you agree or disagree with their conclusion that that is the proper method of arriving at an underwriting profit or loss?

A. I absolutely disagree with it, always have and always will, and having watched the method and procedure further, I am quite certain that anybody else that gave it any thought would.

Q. And I will just ask you, without asking any detailed explanation on your part, just whether you are in agreement or disagreement with some of these other things——

Mr. Barker (interrupting): Your Honor, the witness should be allowed to explain it.

The Witness: Have you an extra copy? I would like to look at it—if not, go ahead.

[fol. 3816] Mr. Folonie:

Q. "A reasonable underwriting profit is five per cent plus three per cent for conflagration. The three per cent allowance for conflagration is subject to revision if and when the records of conflagrations to be collected by the National Board show that such three per cent is excessive or inadequate." Are you familiar with that finding on their part?

A. Yes, sir.

Q. Does that meet with your agreement or disagreement?

A. Disagreement absolutely.

Q. Are you in disagreement or agreement with this formula on page 3: "Underwriting results, State of blank, year ending December 31, 192-, net premiums written,"—amount carried out, "From gross premiums deduct all return and reinsurance premiums paid or affected. Add decrease or deduct increase in unearned premiums"—the amount carried out—"Earned premiums, net"—"Incurred losses, net,"—"Incurred expenses net." Now, does that formula meet with your approval or disapproval?

A. Disapproval.

Q. Does it meet with your approval or disapproval, their adoption of expenses specific to state and pro rata to state, where they——

A. (Interrupting.) Repeat that.

Q. I will just let you look it over.

A. What is the specific term?

Q. "Specific to state," down at the bottom of the page on your right hand side, and then the pro rata to state here on the following page.

A. (Witness examines book.) Why, I would answer that in this way: each state should be chargeable with its own [fol. 3817] expenses and not chargeable with the expense that is thrown out all over the United States from each state because it is almost impossible to, from a department standpoint, to arrive at exactly what that is, and no way of checking and no way of knowing.

Q. In other words, if they have supervisory expenses by way of executive officers and agents covering several states

in a supervisory capacity, the contributions to nation-wide bureaus, such as the National Board, you would eliminate those expenses from consideration entirely?

A. No, I would not answer it that way. My answer to that would be this, that there are certain items that should be taken into consideration and they can be well defined and there are certain other items that should not. There is no excuse in the world for Mr. Hess to charge a part of his expense rate of Missouri to Illinois or to Iowa, or to any other state, and things of that sort. They are just innumerable expenses that can not be charged or can not be allocated to a proper state on a proper base. You can take your own expense here, and, as I say, with a few items, as we have mentioned some of them here, you could allocate properly and find out the proportion that is chargeable to this state, but you can't do it on all of them. It is impossible.

Q. Let me ask you about a few specifically. Take the expense of executive officers and clerical help at the home office in supervising the business for the United States, is that a proper item to allocate?

A. I should say if that was properly allocated at the home office on a proper base, yes.

[fol. 3818] Q. What is that proper base?

A. You would have to take your entire premiums and find out what percentage of the premium represented by Missouri bore to the entire premium and then take that percentage of the home office expense and allocate that portion of it to the State of Missouri.

Q. Suppose you had some supervising officer whose activities covers the States of Missouri and Kansas and Nebraska, would you think it was proper to allocate his expenses in proportion as the expenses in those three states bore to the premiums in those three states?

A. Yes, sir, absolutely; only way you could do it. Would not be proper to charge them nationally because the other states did not get any benefit from it.

Q. If you had a rating bureau entirely within the state, would you think it proper to charge that as a direct expense in the state to that state?

A. Absolutely. I don't think it would be proper to charge any other bureau expenses to that particular state, either.

Q. Any other bureau than what?

A. Where some other state had a supervisory bureau and incurred expenses that did not affect the State of Missouri. It should not be proper to charge it to the State of Missouri, or Illinois, or any other state.

Q. You mean if they had a rating bureau in the State of Illinois, no part of it ought to be allocated to Missouri?

A. Yes, sir, exactly right; and neither should Missouri charge a part of theirs to Illinois.

Q. You and I are quite in agreement on that, Mr. Chorn.

[fol. 3819] Mr. Barker: And the witnesses are quite in disagreement with both of them.

Mr. Folonie: Not at all.

Q. Are you familiar with the enactment of Congress providing for the imposition of tax on insurance companies?

A. Only in a general way, a very limited way.

Q. Do you recall that in that Congressional enactment, which is a law in this country, that earned premiums are taken as the basis upon which to compute the taxes?

A. No, sir.

Q. Are you familiar with the fact that the formula for computing earned premiums is identically the same——

A. (Interrupting.) You mean for income taxes?

Q. Are you familiar with the fact that that Governmental tax on incomes is—gives a definition of earned premium identical with that appearing on page 10 of Exhibit 1 which I have shown you?

A. Have you got a premium income tax now? You are asking me something that I want to clear up. Have you got a premium income tax now?

Q. Income tax I am saying, not premium income tax. I am talking about the general income tax fixed by Congress, which is still in force which contains that provision and imposes a tax upon the earned premiums of insurance companies.

A. No, sir, I am not familiar with that.

Q. If, Mr. Chorn, you have a company with a million dollars of capital and $100,000 of surplus, it starts business on December 1st of a given year with one million dollars [fol. 3820] capital and $100,000 of surplus, and that company writes a million dollars worth of business during that

month, about what would be the reserve on the average as companies write business which they would have to put up on that million dollars of business?

A. It would be owing to what that premium was.

Q. Assuming a million dollars premium.

A. (Continuing:) And whether written on an annual basis or three year or five year.

Q. Well, it is all annual business.

A. What is your premium?

Q. One million dollars.

A. $500,000 reserve out of one million dollar premium and the rest of it go for expenses and profits or whatever it may be.

Q. Now, with the expenses that that company would have, and the fact that their premiums are outstanding, in the hands of agents as a rule for about sixty days, they would have to put up $500,000 reserve with probably none of their premiums actually at hand, wouldn't they?

A. No, I wouldn't say that. A new company I don't think would be as lax in leaving premiums in the hands of the agent because they would know what they would be getting into.

Q. What would they be getting into?

A. Into a position where they would have outstanding premiums which if it were not checked up if more than ninety days past due, might cause them to be reported as insolvent; but they would check up closer, they would get in their premiums much closer than would the average company—a new company would.

[fol. 3821] Q. You think a company with only $100,000 of surplus on December 1st of a given year that put a million dollars of premiums on its books during that year would be solvent at the end of the month when it came to make the annual statement?

A. Would if it had the right sort of agents.

Q. Don't you know their reserves would have consumed their entire surplus so their capital would be impaired?

A. No, sir. You would have a million dollars already in the treasury, or in the hands of the agents, which is not ninety days past due; which would be given credit in an examination by the Insurance Department. Now, if it was

more than ninety days past due and you had $500,000 outstanding, of course you would be insolvent.

Q. Where would the company, if it had not gotten in its premiums, where would it get the money to put up the necessary $500,000 reserve?

A. Arbitrarily there is an item in your annual statement providing for that.

Q. But where would they get it?

A. They would get it from their agents. It is an arbitrary item.

Q. What do you mean by arbitrary?

A. When it is in the hands of your agent—the agent is supposed to colect it. There isn't any outstanding premium on that, so far as the company is concerned. He is supposed to collect it. There isn't any outstanding premoney, except as the statement there shows, if it is not collected in in ninety days, we are going to write it off.

[fol. 3822] Q. Don't you recognize the fact, Mr. Chorn, that the necessity of keeping capital unimpaired necessitates that the reserves which the company have to set up for the unearned portion of their premium has the practical result of greatly reducing the contributed surplus of any new company that starts in doing business if it does any substantial amount of business?

A. And the reason for it is laxity of management and by the selection of agents which they cannot get in within ninety days. If they get them in within ninety days, no. If not, yes. There isn't any argument about that.

Q. So that your idea is that if they get in their premiums just as fast as they are written, why, they can stay solvent right along?

A. That is, if they don't run over with their expense.

Q. What can they do about agency expense? Those are deducted out, aren't they, by the agency before remittance?

A. In the ordinary course of events, yes.

Q. You would not expect a new company starting in to do business to start in competition with old companies on any other basis, would you?

A. No, sir; couldn't do it.

Q. They couldn't compete?

A. Couldn't do it.

Q. So that of necessity you would expect the agents to

deduct their acquisition commissions and you would also expect them to take 30 to 60 days in making their remittances, wouldn't you?

A. Yes, sir; absolutely.

[fol. 3823] The Referee: Now, in this specific case of an agent who collects a hundred dollar premium within a 90-day period and deducts, for illustrative purposes, say $25 as his commission, in determining the solvency or the insolvency of that company, what would be considered in that particular item, $75 or $100?

A. $100. You would set up $50 as a reserve on that; the agent would keep $25 and you would have $25 for your other expenses.

The Referee: But in counting that as an asset of the company in determining solvency, at what amount would you count that?

A. That is taken care of in this annual statement here with the—all the deductions that are necessary to make it net. That would be $75.

The Referee: $75.

Mr. Folonie: Well, to make another illustration that may bring out the court's point a little more clearly——

The Witness (Interrupting): I can show you how that is analyzed on the statement, if you please.

Mr. Folonie:

Q. Suppose the company with $200,000 of capital and no surplus on December 1st of a given year wrote one policy for $10,000 for five years and the premium on that was, we will say, $200. Now, they would set up $200 as premium receipts, would they not?

A. Yes, sir.

Q. If the agent's commission on that was at the rate of 25 per cent, that would be $50 in commissions offset against the premium?

A. Yes, sir.

[fol. 3824] Q. They would have to set up a reserve of $180, would they not, if it was five-year business?

A. They would have to set up the unearned portion of the gross; one month would be 1/60th, if it had run one month; 1/60th of the total of $200.

Q. Well, it is for a five-year policy written during a current year, the reserve is $90, isn't it?

A. Five year policy.

Q. Yes.

A. The law fixes that. It is the pro rata of the unearned premium and it is on a monthly basis. That is the practical method of handling it, and it would be 1/60th at the end of the month; 1/60th of $200, whatever it is.

The Referee: That would be counted as the earned premium?

The Witness: Yes. And 59/60ths would have to be set up as a reserve.

Mr. Folonie:

Q. Now, here is the 1921 statement and here is a five-year policy written in 1921—you set up 9/10ths, don't you?

A. That is set up on an annual basis, and I said the usual rule is to set it up on a twelfth—monthly basis instead of annual basis. If you run it through on the 1/12th you wouldn't have enough pages in the whole thing here to include it.

Q. Here is your total, shows 9/10ths on a five-year policy.

A. That would be 9/10ths on an annual basis, yes. But that is not the way it is set up. It is set up on a monthly basis.

Q. On the annual statement it is?

A. No; in the exhibit. It is simply set up because you [fol. 3825] can't run it close enough on a twelfth basis to bring it down because you wouldn't have enough pages in the whole statement to include it. Five years it would be 59/60ths and you would have that running all through here. And they have got it down on an annual basis, so you would show one year one-fifth earned and four-fifths unearned. If you would put it on a monthly basis you would have 1/60th earned and 59/60ths unearned.

Q. Isn't this table, appearing on page 7 of Exhibit 1, isn't that the reserve as the computation is imposed on the companies by the annual statement blank?

A. No, that is not where you get that. Here—liability, that is what I want. You turn over here, get a recapitulation. Here is what you want. Showing that business writ-

ten on a yearly basis. From this over here, you set up your reserve over here if you had that filled out under liabilities, and there is an item in here, "Gross premiums less reinsurance," page 7. That item is set out in there, taken from this over here, and it is on exactly the same basis that I gave it to you except that they put it on an annual basis by reason of the fact if you put it on a monthly basis you would have too much work.

Q. Take it on an annual basis, the reserve for five-year policy written during the current year in question is nine-tenths, isn't it?

A. If it had run a year?

Q. No, if it was written during the current year.

A. That assumes you have run one year. If it was written five years on a five-year basis and had run the year you would have one-fifth earned and four-fifths unearned, and [fol. 3826] the four-fifths would be set up as reserve on liabilities on page 5.

Q. Isn't this on the assumption the policies written during the current year are on the average company—have on the average company run six months and therefore one-tenth of the policy has expired and nine-tenths is to come?

A. Yes. Here is what happens: If you had one policy, no, but if you had a vast amount of policies they assume that they are written along during the six months and six months has run.

Q. Well, to make a long story short, nine-tenths is the reserve on a five-year policy written during the current year, computing it according to the annual statement basis, isn't it?

A. Nine-tenths, yes, under that.

Q. Therefore, upon one policy with a $200 premium you would set up $180 as the reserve, would you not, on December 31st of that year?

A. If you only had one policy, no. You couldn't do it and comply with the law, but if you had a vast amount of policies, yes, as a practical matter.

Q. If that policy was written June 30th of the current year you would set up $90 on each $100 as a reserve, wouldn't you?

A. Under this law, if you had one policy written on December 31st——

Q. (Interrupting.) No, June 30th.

A. June 30th—don't make any difference. And you made an examination at the end of the month and it is written for five years you would set up 1/60th, or if the examiner [fol. 3827] wanted to be very technical about it he would reduce it down to days in order to exactly comply with the law.

Q. You seem to have answered my question. If one policy with $200 premium was written on June 30th of the current year on December 31st of that year in your computation of reserve, you would set up $90 as the unearned portion and $10 as the earned portion on every $100 premium of that policy, would you not?

A. If you had a large volume of business, yes, as a practical matter.

Q. If you only had one policy you would do identically the same thing, would you not?

A. No. You couldn't do it and comply with the law. The other is not a strict compliance with the law but is used as a matter of practical effect. You cannot go into the detail.

Q. If this company only wrote one policy and wrote it on June 30th and wrote it for five years, on December 31st exactly one-tenth of the term of that policy would have expired?

A. Yes.

Q. And nine-tenths of the term of that policy would be still to come?

A. Yes.

Q. And you would, therefore, set up 90 per cent reserve on that premium?

A. You would set up $180 on the $200. If it run one month and you only had one policy, you wouldn't do it that way.

Q. Besides that $180 reserve that you set up out of the $200, the agent, assuming 25 per cent commission charge, would deduct $50 before he remitted, wouldn't he?

A. Yes.

[fol. 3828] Q. So besides your $180 reserve you would also have to pay or permit the agent to deduct $50 for his commission?

A. Yes, sir.

Q. Which is $130 that you either pay out or set up as a reserve?

A. 140—50 from 90—no, you are right.

Q. If you had a $180 reserve and $50 premium, that is $230 you either pay out or set up as a reserve, isn't it?

A. $130.

Q. Well, try it again, 180 and 50 is how much?

A. You set up or take $50 from your $180.

Q. No, I am going to add it.

A. Well, go ahead with your question.

Q. If you set up $180 reserve and pay $50 to the agent, that is $230 that you either pay out or set up as a reserve, is it not?

A. Yes, sir.

Q. And your total income on that policy is $200, is it not?

A. Yes, sir; that is exactly right.

Q. And if that is the only business that you have done during the year and that is the only policy you have written and you had no surplus, but only a capital stock at the beginning, your capital is impaired to the extent of $30, is it not?

A. Yes, sir. But that is strictly on the theory that this is a term policy and not an annual policy; as you said in the beginning.

The Referee: It is twelve o'clock, gentlemen. We will adjourn now until two o'clock this afternoon.

(Whereupon an adjournment was taken until two o'clock in the afternoon of the same day, at which time parties reconvened and the following proceedings were had:)

[fol. 3829] Cross-examination (continued) by Mr. Folonie:

Q. Mr. Chorn, you say you have been attending Insurance Commissioners Conventions from year to year since you left office?

A. Yes, sir.

Q. And by whom were you employed for the purpose of attending those conventions?

A. Why, I was employed by no one for the purpose of attending conventions.

Q. Who paid your expenses for going there?

A. I attended the conventions in behalf of clients I represented.

Q. I don't mean to pry into your personal affairs, and I will ask you so you can answer without disclosing their names, if you prefer. Were they reciprocal insurance interests?

A. Some of them were stock company interests, some of them were reciprocal and some mutual.

Q. What stock company interests have you represented at any time since you have left the office of superintendent?

A. I don't know that has any bearing on the case, but I am perfectly willing to answer. Equity Fire, a stock company; Fidelity Union Fire, a stock company; Fidelity Union Casualty Company, stock; Employers Indemnity Corporation, stock; Mutual Union Life, stock, and others.

Q. And all those——

A. (Interrupting.) In addition to the reciprocal exchanges which I represent.

Q. Now, those you have mentioned, how many of them are stock fire insurance companies?

A. I named them there. Fidelity Union Fire, stock; [fol. 3830] Equity Fire, stock; Merchants Fire, stock—I do not believe I named that.

Q. The others you mentioned, the Employers Indemnity and Mutual Union, they are not fire companies, are they?

A. No, sir.

Q. Now, is Mr. Bruce Dudson one of the Directors of this Equity Company you mentioned?

A. He is.

Q. He is one of the leading reciprocal men here in Kansas City, is he not?

A. Yes, sir; I should say he was.

Q. And is he director of either of these companies you mentioned, the Mutual Fire or Fidelity Union?

A. Not to my knowledge; no, sir.

Q. Is the Merchants Fire a local organization of Kansas City?

A. Yes, sir—it is not now, it liquidated.

Q. What about the Fidelity Union, are they still in business?

A. That is a Texas Company, yes, sir.

Q. And this Equity is managed by the same interests that manage the reciprocal business, is it not?

A. Yes, sir; to a great extent.

Q. Same group of people more or less. Is the Fidelity Union also associated with the reciprocal interests?

A. No, sir.

Q. Don't they have reinsurance arrangements with the reciprocal interests—exchanges?

A. They do not.

Q. Are they licensed to do business in the State of Missouri?

A. Yes, sir.

Q. Still in business, are they?

A. Yes, sir.

[fol. 3831] Q. When did this Fidelity Company start doing business in this state?

A. I should say a couple of years ago.

Q. You represented the reciprocal interest before that time, did you not?

A. Yes, sir.

Q. And Mr. Howell, who is associated with you in the office, is attorney for reciprocal interests, is he not?

A. Yes, sir.

Q. Are you in partnership with him or is it just an office arrangement of some kind?

A. It is an office arrangement.

Mr. Folonie: That is all of this witness.

Redirect examination by Mr. Barker:

Q. Mr. Chorn, Mr. Folonie asked you if one Perry Spencer had been the Actuary in the Missouri Insurance Department. In connection with that, who did you succeed as Actuary in the Missouri Insurance Department?

A. Judge Albert L. Reeves.

Q. Now Federal Judge of Kansas City?

A. Yes, sir.

Q. Mr. Folonie also asked you if you agreed with the report which he read of somebody as to the allowance of

five per cent underwriting profit and a three per cent conflagration reserve, and you stated you disapproved of that?

A. Yes, sir.

Q. Tell the court why?

A. Why, it is perfectly apparent to me that if the companies that were—that write a very large percentage of the fire insurance business in this country have been able with one-half of one per cent to return huge dividends, if [fol. 3832] you had eight per cent as an underwriting profit, which means five per cent underwriting and three per cent conflagration, which is not segregated, it would mean state insurance within less than a period.

Q. Why?

A. Simply because the profits to the companies would be so huge that the public would become enraged, and they would simply take over the insurance business. Don't make any difference no matter how it was handled, the companies themselves——

Q. Go ahead.

A. The companies themselves would have nearly an eight per cent underwriting profit, and an eight per cent underwriting profit would be all out of reason. They just simply could not afford to take it, that would be all, from the public standpoint.

Mr. Leahy: The gentleman is here giving reasons because of his benevolent feeling for the stock insurance companies, but he was asked to give his reasons other than——

The Witness: If——

Mr. Leahy: What are your personal reasons for it?

The Witness: What are my personal reasons for it?

Mr. Leahy: Yes.

The Witness: That is the only reason; I have got no personal reason at all.

Mr. Leahy: Don't believe in state fire insurance?

The Witness: No, sir; I don't; I am as much interested in that end of it as you are.

Mr. Leahy: More so I should say.

The Witness: No, I don't think I am any more.

[fol. 3833] The Referee: Proceed with the examination.

Mr. Barker:

Q. Now, Mr. Chorn, Mr. Folonie called your attention to Exhibit 1, which you identified as an annual report. Now, that report, as I understood you, reflects the business of the companies throughout the United States?

A. Yes, sir.

Q. Is not limited to Missouri?

A. No, sir.

Q. Now, the report in that blank, Exhibit 1, as to the Missouri business, is on what basis, written or earned?

A. It is on the written basis.

Q. Can you see any difference, Mr. Chorn——

Mr. Hogsett: Move to strike out that answer, given before time for an objection was allowed, on the ground that the report itself is the best evidence, and we offer the report to the witness and let him point out wherein the Missouri experience is on a written basis.

The Referee: Proper on cross examination. Proceed, General. Overruled. I mean to bring out what you have in mind it is proper cross examination.

Mr. Folonie: The report——

Mr. Barker: They may ask you on——

Mr. Hogsett: The report is the best evidence.

The Referee: The report is in evidence.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Barker: If there is any dispute about it of any kind, I want to straighten it out now. Where is the report?

[fol. 3834] Mr. Hogsett: Right there.

Mr. Barker:

Q. Turn to the report, in view of Mr. Hogsett's objection, where it reports Missouri business.

A. In the first place, I would have to add an explanation there, that you have three reports in the State of Missouri, one for tax purposes, one for rate-making purposes, and one is a financial statement dealing with solvency, which is the present statement, dealing with solvency, and has no connection whatever with the other two reports.

Q. Find me the page where the Missouri business is reported.

Mr. Leahy: Will you indicate what you say has to do only with solvency?

Mr. Barker: Plaintiff's Exhibit 1.

The Witness: The entire report. It is a financial statement.

The Referee: What exhibit?

Mr. Barker: Exhibit 1.

Q. Now, I call your attention to page 9 of Exhibit 1, headed, "Business in the State of Missouri during 1921."

A. "Gross risks written."

Q. I call your attention to it, the first item under "Fire," "Gross Risks Written," then "Premiums received," head lines; an item underneath, "Fire," "Gross premiums on risks written;" then calling your attention to the head lines, "Losses paid and losses incurred:" calling your attention to "Fire," "Losses paid," "Net losses paid" and "Losses incurred." Now, tell the court if that is the report as contained in the annual statement as to the Missouri business?

A. It is.

[fol. 3835] Q. And that is on what basis?

A. On a written basis.

Q. Now, Mr. Chorn, prior to the rating act in 1915, how many reports were filed with the department by the companies?

A. Two.

Q. What were they?

A. Annual statement or financial statement, whatever you want to call it, and tax statement.

Q. The report of the tax statement was on the written basis, or what?

A. On a written basis.

Q. Now, after the passage of the rating act, was there a special blank prepared known as the underwriting report by classes?

A. Yes, sir.

Q. Did you assist in the preparation of that?

A. I did.

Q. Were conferences held with the insurance companies regarding it?

A. Yes, sir.

Q. Was that report the result of an agreement between the companies and the State?

A. Yes, sir.

Q. Did they make any objection to the report on a written basis?

A. No, sir.

Q. Did they urge any other way?

A. No, sir.

Q. Now, Mr. Chorn, can you see any different way of figuring the question of solvency on an earned basis and using the same for rate-making purposes?

A. They are entirely different. Designed for a different purpose entirely. Have nothing whatever to do with one another. Rate-making has nothing whatever to do with solvency. Solvency deals only with financial ability to pay claims and is made up of the premiums paid with reserve [fol. 3836] set up for the purpose of paying unearned premium reserves and less reserves and expenses.

Q. Now, you have testified that the earned premium basis could not be considered, according to your judgment, in Missouri for rate-making purposes. Will it reflect the true condition as to the solvency of the companies?

A. May I ask for that again. I didn't quite catch that.

Mr. Barker: Read the question.

(Question read by the reporter.)

A. Yes, sir; it will. That is practically as near as you can get it.

Q. Now, Mr. Chorn, is there any difference in setting up reserves whether you have a written basis or an earned basis?

A. Oh, yes; there would be a difference.

Q. Well, can the reserve be maintained under either basis the same as the other?

A. Yes, it could be. This is just—the report as used is just one of, you might say, a dozen different theories advanced for setting up reserves.

Q. Now, considering the Missouri law and its application and your rulings in the department, could some reserve be set up on a written basis without any difficulty?

A. Oh, yes; there would not be any difficulty in setting them up on a written basis.

Q. In figuring the written basis for rate-making purposes, does it interfere in any way with the reserves which have to be set up?

A. No, sir; has nothing whatever to do with it. It is entirely separate and distinct.

[fol. 3837] Q. Now, Mr. Chorn, during the time that you were superintendent and after the blank which was used in 1915, underwriting report by classes blank, did you aid in the preparation or a change in the blank?

A. That was started but was finished after I left office.

Q. Did you have conferences with insurance representatives?

A. Yes, sir.

Q. The stock fire companies is about the same in the state then as are in the state now?

A. I would say very substantially the same, yes, sir.

Q. Now, Mr. Chorn, during the time you were Insurance Superintendent, what was the departmental interpretation under the rating act as to whether or not all of the earnings of the corporation should be considered?

A. The department always considered that all the earnings——

Mr. Folonie: We object to any line of inquiry as to the departmental attitude or position, or their views in the matter, as incompetent and not binding on the plaintiffs.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time excepted, and still except.)

A. It was always the contention of the department and the ruling of the department that all earnings of all companies should be taken into consideration in making rates.

Mr. Folonie: As to the rulings, we move to strike it out, on the ground that as to the rulings, the records of the office would be the best evidence.

[fol. 3838] Mr. Barker: If he knows of them, I think he could state it; but I asked for the interpretation.

The Referee: As to the rulings, I think the objection should be sustained.

(To which action and ruling of the referee the defendant, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. What were the interpretations placed upon it by the department?

Mr. Folonie: Same objection to that as repetition.
The Referee: He may answer. Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. Why, the interpretation of the department was always that all earnings of whatever character should be taken into consideration in making rates for the state.

Mr. Barker:

Q. Now, Mr. Chorn, the underwriting end of the business collects money from the policy holders, pays all expenses and losses until it has a net sum left does it not?

A. That is a rather vague way to state it. I do not just get your idea.

Q. There comes a time when the underwriting end has a sum of money in its possession, is that right?

A. Yes, sir.

Q. Now, then, could the underwriting department take that money to a savings bank and secure three and a half to four per cent on it?

A. I think they could.

[fol. 3839] Q. Instead of that they deliver it to the investment end of their business in the same office and the investment end loans it, is that right?

A. Yes, sir.

Mr. Barker: That is all.

Recross-examination by Mr. Folonie:

Q. In this investigation that you made, which you said you were in Mr. Parker's office, just to fix the time, and when you said you determined the companies were entitled to an increase in your judgment, you did not take into consideration any earnings at all on the—any earnings except on the underwriting end of the business in that, did you?

A. Oh, yes; yes, sir; always did it.

Q. You mean that in your negotiations with those people that was often discussed or mentioned?

A. Yes, sir; that was often discussed and discussed and discussed to the extent that—well go ahead.

Q. Now, you have indicated how terrible it would be if large companies could pay big dividends of one-half of one per cent underwriting profit. Don't you realize from your knowledge of the business that the large companies, such as the Home and the Hartford, Continental and Phenix, all of them make and have made for many years a much greater underwriting profit than one-half of one per cent?

A. No, sir; I don't realize that.

Q. Do you know that the Continental has made an underwriting profit in excess of one-half of one per cent for over 35 years?

A. No, sir; I did not understand that. I do not know that.

[fol. 3840] Q. Do you know that the Phenix Insurance Company has made an underwriting profit in excess of that fixed by the commissioners for more than twenty years past?

A. I do not.

Q. Don't you know that if the companies have made an underwriting profit on the average of one-half of one per cent, that necessarily those who are at the top of the list make more than that and those at the bottom of the list make less?

A. No, sir. I do not know there is a difference between it, but when you take the average underwriting profit, which is 1/36, and one-half of one per cent——

Q. I thought you said it was one-half of one per cent.

A. I said it was less than one-half of one per cent. But the statements on which I base it, and which I stated in the beginning, would show less than one-half of one per cent—statement of the presidents of two of the companies

in a hearing a short time ago was to the effect that 1/36th of one per cent, and I think that that was the—I know it is less than one-half, and I believe that is the amount fixed in the underwriters' report.

Mr. Folonie: I move to strike out the voluntary statement of the witness about what some supposed presidents of companies stated.

Mr. Barker: I think that is competent in answer to the question.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time excepted, and still except.)

[fol. 3841] Mr. Folonie:

Q. Does not your understanding of the word "average" imply that if there has been a small underwriting profit on the average, that to reach that average it requires an absorption of the losses of those companies which have done business so unprofitably they have had to go out of business?

A. No, sir; it means that is the average of all of them.

Q. And does not that necessarily lead to the conclusion that the companies that have been conducted profitably over a long period of time and well managed, with a large volume of business, would have a greater underwriting profit than the average of all of them combined?

A. When you take the few large companies that you speak of there that write the vast percentage of the business, the difference between them and the small companies that run their underwriting profit below the line would make it almost nothing. In other words, the great volume of the business is done by a few very large companies.

Q. Now, how many companies—how long a period did this 1/32nd, or whatever it was, of a per cent you mentioned, how long a period did that cover?

A. That covered, if I recall, twenty years.

Q. In that twenty years, how many companies, stock fire insurance companies, have gone out of business, gone broke?

A. I should say according to the best—483.

Q. Do you have in mind how many of those——

A. (Interrupting.) They have gone out of business one way or another, don't mistake that.

[fol. 3842] Q. Do you know how many of those went out of business after the San Francisco fire?

A. Quite a few of them. Not directly caused by the fire, however. Very few went out as a direct result of the fire.

Mr. Folonie: That is all with this witness.

Mr. Barker: That is all, Mr. Chorn. Thank you, sir.

The Witness: Do you gentlemen desire my presence any more?

Mr. Folonie: You can be excused as far as we are concerned.

The Witness: Thank you.

(Witness excused.)

E. C. McGee, recalled as a witness on behalf of the defendant, having been previously duly sworn, testified further as follows:

Direct examination by Mr. Barker:

Q. Mr. McGee, in explaining the different methods of figuring underwriting profit, you spoke of what is known as the E. G. Richards theory.

A. Yes, sir.

Q. I call your attention to Defendant's Exhibit 2036, and ask you if that is the table that you prepared as applied to the Missouri business on that theory?

A. Yes, sir, that is an illustration that I have made of it.

Mr. Barker: I offer that in evidence. We forgot it before.

Mr. Folonie: Let us see what it is all about.

(Paper handed to Mr. Folonie.)

[fol. 3843] Mr. Folonie: We object to the calculated exhibit on the ground it is incompetent, irrelevant and immaterial, and not bearing upon any proper issue herein, based upon purely artificial supposed facts not existing according to the record.

The Referee: What is the exhibit, General?

Mr. Barker: This is a table prepared in explaining different methods of figuring underwriting profit or loss and referring to the Richards method, it shows the result reached on that and is important, we think, in view of his testimony. He was cross examined fully as to it. The record would not be clear without it being in, I think.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Mr. McGee, you also testified as to the investment earnings from the annual statements of the fire insurance companies for the five years, 1917 to 1921, inclusive, as on file in your office?

A. Yes, sir.

Q. I call your attention to Exhibit 2037, and ask you if that is a tabulation you compiled of the investment earnings as taken by you from the annual statements on file in your office?

A. Yes, sir.

Mr. Barker: We offer that.

Mr. Folonie: We object on the ground, if the court please, that the—so much of the order here in question as take into [fol. 3844] consideration supposed investment earnings, and this proof offered upon that theory, if admitted, are violative of the rights of the plaintiff granted by the Constitution of the State of Missouri, violative of the guaranties of the Fourteenth Amendment of the Constitution of the United States, taking of property without due process of law, denial of equal protection of the laws; that it is an effort to take property earned on activities not here in question and use them by way of offsetting losses incurred upon their business of insurance, and is, therefore, unconstitutional, violative of the provisions mentioned; and on the further ground that under the provisions of the rating statute under which this hearing is conducted and these proceedings had, only those earnings or losses upon business in the State of Missouri is proper for consideration, not

those earnings outside of the state, or any activities except those of insurance.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Said Exhibit No. 2037 is as follows:

"A"

Investment Exhibit from Annual Statements of Fire Insurance Companies for Five Years, 1917 to 1921, Inclusive

	Interest and rents earned	Investment profit	Total income from investments	Investment loss	Investment expense	Total investment loss and expense	Net investment profit
1917	287,870.07	14,611.98	302,482.05	313,716.36	24,853.79	338,570.15	36,088.12*
1918	335,235.04	75,429.25	410,664.29	102,530.21	23,773.13	126,303.34	284,360.95
1919	383,770.77	98,396.96	482,167.73	278,025.55	28,578.88	306,602.43	175,565.30
1920	460,544.31	93,993.74	554,538.05	317,135.73	31,322.66	348,458.39	206,079.66
1921	508,157.47	430,481.65	938,639.12	153,373.21	32,648.48	186,021.69	752,617.43
Total	1,975,577.66	712,913.56	2,688,491.22	1,164,779.06	141,176.94	1,305,956.00	1,382,535.22

"B"

Capital and Surplus of Fire Insurance Companies, Five Years, 1917 to 1921, Inclusive

	1917	1918	1919	1920	1921	Total 5 years
Capital	1,072,347.80	1,129,515.80	1,205,729.95	1,316,405.80	1,431,300.80	6,155,300.15
Contributed Surplus	25,783.81	18,720.00	17,470.21	20,850.00	58,731.21	141,555.23
Total Capital & Contrb. Sur.	1,098,131.61	1,148,235.80	1,223,200.16	1,337,255.80	1,490,032.01	6,296,855.38
Earned Surp.	1,979,035.41	2,310,180.23	2,753,501.43	2,602,131.91	2,938,450.08	12,583,299.06
Total C. & S.	3,077,167.02	3,458,416.03	3,976,701.59	3,939,387.71	4,428,482.09	18,880,154.44

"C"

Invested Funds of Fire Insurance Companies, Five Years, 1917 to 1921, Inclusive

	1917	1918	1919	1920	1921	Total 5 years
Real Estate & Collateral Loans	403,158.95	413,294.60	427,053.09	485,794.50	506,808.19	2,236,109.42
Stocks & Bonds	5,249,535.55	6,132,289.55	7,187,160.35	8,246,997.03	8,543,536.91	35,359,519.39
Cash in Banks on Interest	748,568.56	751,215.75	809,804.62	838,463.88	824,936.01	3,972,988.82
Total Invested Funds	6,401,263.06	7,296,799.90	8,424,018.06	9,571,255.50	9,875,281.11	41,568,617.63

[fol. 3846]

"D"

Capital and Contributed Surplus, Earned Surplus, and Total Capital and Surplus and the Per Cent of Total Invested Funds Represented by Each

	1917	1918	1919	1920	1921	Total 5 years
Capital and Contributed Surplus	1,098,131.61	1,148,235.80	1,223,200.16	1,337,255.80	1,490,032.01	6,296,855.38
Per Cent of Invested Funds	17.15%	15.73%	14.52%	13.97%	15.09%	15.15%
Earned Surplus	1,979,035.41	2,310,180.23	2,753,501.43	2,602,131.91	2,938,450.08	12,583,299.06
Per Cent of Invested Funds	30.45%	31.66%	32.68%	27.18%	29.75%	30.27%
Total Capital & Surplus	3,077,167.02	3,458,416.03	3,976,701.59	3,939,387.71	4,428,482.09	18,880,154.44
Per Cent of Invested Funds	47.6%	47.39%	47.2%	41.15%	44.84%	45.42%

[fol. 3847] Mr. Barker:

Q. Now, Mr. McGee, you also testified as to the total business in the United States of fire insurance companies doing business in Missouri for the five years from 1917 to 1921, inclusive?

A. Yes, sir.

Q. I call your attention to defendant's Exhibit 2038 and ask you if that is a tabulation and compilation?

A. Yes, sir.

[fol. 3848] Q. In explanation of your testimony on that point?

A. Yes, sir, it is.

Mr. Barker: We offer that, Mr. Folonie.

Mr. Folonie: Let us see what it is all about.

(Exhibit handed to counsel.)

We object on the same grounds urged in objection to Exhibit number 2037, and reiterate each of such objections; and further object on the ground that the tabulation here presented is upon an improper and incorrect basis, in that the same takes as one of the predicates net written premiums instead of earned premiums; that the same undertakes to add thereto the investment profits—supposed investment profits, which is objectionable upon the grounds urged in objection to the last preceding exhibit; that losses and expenses are not upon an incurred basis, but upon a supposed paid basis, and are, therefore erroneous, and because the capital and surplus are taken upon an arbitrary and improper basis, as stated by the witness upon his testimony at the last hearing, that he undertook to calculate capital and surplus as to foreign companies by taking the amount of their deposit with the State of New York as if it were capital, taking the amount of money remaining in this company as if it were surplus, regardless of the amount of money sent from the home office to the United States or still except.)

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Said Exhibit No. 2038 is as follows:

[fol. 3849] DEFENDANT'S EXHIBIT 2038

Exhibit of Total Business in the United States of Fire Insurance Companies Doing Business in Missouri for Five Years, 1917 to 1921, Inclusive

	Net premiums	Net investment profit	Total income	Losses	Expenses
1917	4,454,825 48	36,088 12*	4,418,777 36	1,997,595 73	1,520,188 59
1918	5,158,211 77	284,360 95	5,442,572 72	2,413,691 48	1,909,089 98
1919	5,886,534 13	175,565 30	6,062,099 43	2,317,551 23	2,240,983 70
1920	7,147,275 21	206,079 66	7,353,354 87	3,141,980 92	2,788,011 64
1921	6,121,966 22	752,617 43	6,874,583 65	3,675,365 09	2,664,948 87
Ttoal..	28,768,852 81	1,382,535 22	30,151,388 03	13,546,184 45	11,123,222 78

	Total cost	Underwriting profit	Total profit	Capital	Surplus
1917	3,517,784 32	937,081 16	900,993 04	1,072,347 80	2,004,819 22
1918	4,322,781 46	835,430 31	1,119,791 26	1,129,515 80	2,328,900 23
1919	4,558,534 93	1,327,999 20	1,503,564 50	1,205,729 95	2,770,971 64
1920	5,929,992 56	1,217,282 65	1,423,362 31	1,316,405 80	2,622,981 91
1921	6,340,313 96	218,347,74*	534,269 69	1,431,300 80	2,997,181 29
Total..	24,669,407 23	4,099,445 58	5,481,980 80	6,155,300 15	12,724,854 29

Underwriting Profit, 4,099,445 58 = 66.6% on Capital, or 21.71% on Capital and Surplus.
Investment Profit, 1,382,535.22 = 22.46% on Capital, or 7.32% on Capital and Surplus.
Total Profit, 5,481,980.80 = 89.06% on Capital, or 29.03% on Capital and Surplus.

*Red.

9885

[fol. 3850] Mr. Folonie: Incorporating my constitutional objection by reference in this objection.

The Referee: Yes.

Mr. Barker:

Q. Mr. McGee, you also testified as to the Missouri business from the reports of the underwriting experience by classes blank filed with the Insurance Department for the five years in question, together with your tabulation as to the underwriting profit or loss, investment profit or loss, and the total profit or loss, did you?

A. Yes, sir.

Q. I call your attention to Exhibit 2039 and ask you if that is a table explanatory to your testimony?

A. Yes, sir, it is.

Mr. Barker: We offer Exhibit 2039 (handing same to Mr. Folonie).

Mr. Folonie (after examining Exhibit 2039): We object to it upon all grounds of objection made to Exhibit 2036, and on the additional ground it purports to be a resume of the underwriting experience by classes blanks, which are established to be incorrect, and conceded so to be, and because the calculations of the witness have been admitted by the defendant Hyde to be incorrect.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

Mr. Barker:

Q. Mr. McGee, you also testified with reference to the Missouri business from exhibits of written premiums, losses [fol. 3851] paid and expenses paid filed by the companies in this suit?

A. Yes, sir.

Q. And gave your report showing the underwriting profit or the underwriting loss, and the investment profit or the investment loss from the figures introduced by the plaintiffs in this suit, did you?

A. Yes, sir.

Q. I call your attention to Exhibit 2040 and ask you if that is a compilation and tabulation of the Missouri business with reference to profit or loss from the figures as submitted by the plaintiffs in this suit.

A. Yes, sir.

Mr. Barker: I offer Exhibit 2040 (handing same to Mr. Folonie).

Mr. Folonie: We object on all the grounds of objection urged to Exhibit number 2036, and in addition urge the objection that there purports to be in this column net investment profit, which is added into the figures, and also Missouri percentage of capital and Missouri percentage of surplus, none of which figures can or may be adduced from any evidence of the plaintiffs, and, therefore, the statement that it is a calculation based upon the plaintiffs' figures is necessarily incorrect.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Said Exhibit Nos. 2039 and 2040 are respectively as follows:

[fol. 3852] DEFENDANT'S EXHIBIT 2039

Exhibit of Missouri Business from "Reports of Underwriting Experience by Classes" Filed with the Insurance Department

Net Written Premiums, Losses Paid, and Expenses Paid

	% of total	Net premiums	Net investment profit	Total income	Losses
1917	2.62%	116,820.39	945.50*	115,874.89	70,673.45
1918	2.49%	128,518.23	7,080.58	135,598.81	89,498.58
1919	2.59%	152,408.28	3,547.14	155,953.42	61,768.08
1920	3 %	213,064.55	6,182.38	219,246.93	86,898.53
1921	2.74%	168,168.23	20,621.71	188,789.94	113,377.95
Total	.....	778,977.68	36,486.31	815,463.99	422,216.59

*Red.

	Expenses	Total cost	Underwriting profit	Total profit
1917	45,504.88	116,268.33	552.06	393.44*
1918	50,469.65	139,968.23	11,450.00*	4,369.52*
1919	59,560.37	121,328.45	31,077.83	34,625.07
1920	81,023.95	167,922.48	45,142.07	51,324.45
1921	67,083.49	180,441.44	12,273.21*	8,348.50
Total	303,712.34	725,928.93	53,048.75	89,535.06

	Missouri % of capital	Missouri % of surplus
1917	28,095.51	52,526.26
1918	28,124.94	57,988.81
1919	31,228.40	71,768.16
1920	39,492.17	17,089.45
1921	39,217.64	82,122.76
Total	166,158.66	343,095.44

Underwriting Profit, 53048.75 = 31.93% on Capital, or 10.32% on Capital and Surplus.

Investment Profit, 36486.31 = 22.46% on Capital, or 7.32% on Capital and Surplus.

Total Profit, 89535.06 = 54.39% on Capital, or 17.64% on Capital and Surplus.

[fol. 3853] DEFENDANT'S EXHIBIT 2040

Exhibit of Missouri Business from Exhibits of Written Premiums, Losses Paid, and Expenses Paid Filed by Companies in this Suit

	% of total	Net premiums	Net investment profit	Total income	Losses
1917	2.09%	118,797.57	959.94*	117,837.63	71,123.16
1918	2.64%	126,094.60	7,547.13	143,641.73	93,782.06
1919	2.75%	161,728.43	4,828.04	166,556.47	66,492.61
1920	3.05%	218,860.59	6,285.43	225,256.02	92,385.09
1921	3.35%	199,450.62	24,460.06	223,910.68	146,791.29
Total		825,021.81	42,160.72	877,182.53	470,574.23

	Expenses	Total cost	Underwriting profit	Total profit
1917	44,064.42	115,187.58	3,609.99	2,650.05
1918	52,325.29	146,107.35	10,012.75*	2,465.02
1919	61,696.13	128,188.76	33,539.67	38,367.71
1920	86,735.31	179,140.49	39,810.19	46,936.62
1921	86,195.19	232,986.48	33,535.80*	9,075.80*
Total	331,036.34	801,610.57	33,411.24	75,571.96

*Red.

	Missouri % of capital	Missouri % of surplus
1917	28,524.45	53,328.19
1918	29,819.21	61,482.96
1919	33,157.57	76,201.72
1920	40,150.37	80,060.94
1921	46,517.27	97,408.39
Total	178,168.87	368,422.20

Underwriting Profit, 33411.24 = 18.75% on Capital, or 6.11% on Capital and Surplus.

Investment Profit, 42160.72 = 23.66% on Capital, or 7.79% on Capital and Surplus.

Total Profit, 75571.96 = 42.41% on Capital, or 13.9% on Capital and Surplus.

[fol. 3854] Mr. Barker:

Q. Mr. McGee, you also testified as to Missouri business by regulated classes?

A. Yes, sir.

Q. As secured from the figures filed by the plaintiffs in this suit?

A. Yes, sir.

Q. I call your attention to Exhibit 2041 and ask you if that tabulation and compilation of the Missouri business on regulated classes, taken from the figures as filed by the plaintiffs in this suit is in explanation of your testimony on that point?

A. Yes, sir.

Mr. Barker: We offer Exhibit 2041 (handing same to Mr. Folonie).

The Referee: Was the tabulation from figures filed by plaintiffs in this case?

The Witness: Yes, sir.

Mr. Barker: They have all been identified before.

The Witness: Just the same as the preceding one exhibit, eliminating about eleven million we claim is not regulated by this law.

Mr. Folonie: You don't mean exhibits filed in this case by plaintiffs, do you, Mr. McGee?

The Witness: Premiums and losses, yes.

Mr. Folonie: Take the investment items here.

The Witness: Don't make any claim that you filed any of them.

Mr. Leahy: Where did you get that from?
The Witness: What?
Mr. Leahy: Where is that information derived from?
The Witness: Annual statements.
Mr. Leahy: Sir?
[fol. 3855] The Witness: Annual statements.

Mr. Barker:

Q. On file in your department by these plaintiffs?
A. Yes, sir.

Mr. Folonie: Make the same objection to Exhibit 2041 as we made to Exhibit 2036, and in addition, on the ground that the same purports to relate only to so-called regulated classes instead of applying to the entire business of insurance conducted by the plaintiffs in the state and therefore is incompetent.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time excepted, and still except.)

Mr. Barker:

Q. Mr. McGee, you testified as to the effect of an increase granted to the plaintiffs in 1920 and also as to the effect of the ten per cent reduction order as made by the Insurance Department in this suit in November, 1922, did you?
A. Yes, sir.
Q. I call you attention to Exhibit 2042, and ask you if that is a table that shows the effect of the increase granted in 1920, January, 1920?
A. Shows the effect what?
Q. Of the allowance of this ten per cent reduction order in this case?
A. Yes, it does.

Mr. Barker: I offer Exhibit 2042.
Mr. Folonie: We object on all the grounds urged to objection 2036, and additionally object to any assumption that there was any such increase in 1920, of which there is no competent proof, and we deny that there was any such

[fol. 3856] increase; and we object in addition on the ground that the supposed increase effective in 1920 and 1921 here recited of a supposed increase order, which has not been proven and which is non-existent, neither has the said order been in any wise proven or shown or has it in any wise been established that the guesses of this witness have any basis in fact as to the supposed effect of a non-existent order.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Said Exhibit No. 2042 is as follows:

Showing Effect of Increase and Decrease on Basis of Total Business

Net Premiums 1920			21,895,057 00
Amt. on which rates increased—71%		15,545,490 00	
Increase of 15% on 15,545,490.00	2,331,823 00		
Amt. of increase effective in 1920—21%	489,683 00		
Net Premiums 1921			19,945,062 00
Amt. on which rates increased—71%		14,160,994 00	
Increase of 15% on 14,160,994.00	2,124,149 00		
Amt. of increase effective in 1921—28%	594,761 00		
Net Premiums 1917-1921			83,502,181 00
Amt. of rate increase effective in 1920		489,683 00	
Amt. of rate increase effective in 1921		594,761 00	
Total of increase effective in 1920-1921			1,084,444 00
Net prems. 1917-1921 less increase			82,417,737 00
Amt. on which rates increased—71%		58,516,593 00	
Increase of 15% on 58,516,593.00	8,777,489 00		

Result of Increase Made in 1920:

Net Prems. 1917-1921 with amt. of increase effective in 1920-1921 deducted	82,417,737 00
Add amt. of increase in rates	8,777,489 00

Net prems. with increased effective entire period 1917-1921		91,195,226 00	
Losses paid 1917-1921	27,057,423 00		
Expenses paid 1917-1921	33,103,634 00		
Total Losses and Expenses Paid		80,161,057 00	
Underwriting Profit		11,034,169 00	=61.93% on Cap. or 20.2% on C. & S.
Investment Profit		4,216,072 00	=23.66% on Cap. or 7.79% on C. & S.
Total Profit		15,250,241 00	=85.59% on Cap. or 27.99% on C. & S.

[fol. 3858] Result of 10% Decrease in Rates

Net Prems. 1917-1921 with increase in effect			91,195,226 00
Reduction of 10%			9,119,522 00
Net Prems. after 10% reduction			82,075,704 00
Losses Paid 1917-1921		47,057,423 00	
Expenses Paid 1917-1921		33,103,634 00	
Total Losses and Expenses Paid			80,161,057 00
Underwriting Profit			1,914,647 00

Showing Effect of Increase and Decrease—Continued

Investment Profit	4,216,072 00
Total Profit	6,130,719 00

1,914,647 00=10 75% on Cap. or 3 5% on C. & S.
4,216,072 00=23 66% " " " 7 79% " " & "
6,130,719 00=34 41% " " " 11 29% " " & "

[fol. 3859] Mr. Barker: That is all we have, Your Honor.

Defendant rests.

And thereupon defendant rested his case.

The Referee: Any further evidence on the part of the plaintiffs?

Mr. Folonie: Yes, I have some rebuttal evidence here. No questions of this witness.

And thereupon, the plaintiffs, to further maintain the issues in their behalf, introduced the following evidence in rebuttal, to-wit:

A. S. Baty, recalled as a witness in behalf of the plaintiffs, in rebuttal, having been previously sworn, was examined and testified further as follows:

Direct examination by Mr. Folonie:

Q. Mr. Baty, you testified in this case upon the plaintiffs' direct case, did you not?

A. I did.

[fol. 3860] Q. And are now recalled in rebuttal. Have you at my request made a comparative statement of the experience of the companies, adopting the figures of the witness McGee as I have furnished them to you from my notes respecting claimed differences in the unearned premiums as of respective dates?

A. I have.

Q. Now, the figures given by McGee as to unearned premiums were differing figures from your own as to certain companies of various periods as of December 31, 1916, 1917, 1918, 1919, 1920 and 1921. Are the intermediate unearned premium figures excepting those of December 31, 1916, and of December 31, 1921, of any materiality in determining the experience of this period?

A. No, sir.

Q. Are you able to state why a difference should exist on these unearned premium figures as computed by Mr. McGee on those companies and as computed by yourself?

A. Yes.

Q. What is the reason?

A. The reason is that there were a few companies who were found to figure their unearned premium on an actual basis in the State of Missouri. There were others who had taken the percentages of increase in the unearned premium. There were others who had fleets where the business had been divided up—which would more or less affect the outcome of the unearned premiums.

Q. Now, have you made a calculation adopting the figures of Mr. McGee as to the unearned premiums of companies recited by him as of December 31, 1916, and December 31, 1921, to ascertain the effect of adopting his figures and [fol. 3861] substituting them for your own?

A. I have.

Q. Is this paper here produced your calculation on that (handing paper to witness)?

A. It is.

Q. Now, have you set out on this exhibit the unearned premiums as of those respective dates as they appeared by the company calculations, by which I mean your own as made from their records and then also figures as given by Mr. McGee in parallel column?

A. I have.

Q. Now, adopting the figures of Mr. McGee and substituting them for your own as to those companies where he gave the aggregate figures, what is the effect of adopting Mr. McGee's figures as going—whether such adoption increases or decreases the underwriting loss as you had calculated it and stated it previously on the direct case?

A. Increases it.

Q. You mean the loss experience of the companies in this state if you adopted Mr. McGee's figures would be worse than if you retained your own figures?

A. Yes, sir.

Q. And what is the difference? Just give it to us.

A. In amount?

Q. Yes.

A. $502,960.

Q. Is that an increase—that is, the department's figures increase the unearned premium over the period by $502,000?

A. Yes, sir.

Q. And would, therefore, go correspondingly to reduce the unearned premium figure for the period?

A. Yes, sir.

[fol. 3862] Q. And you have set these figures down company by company, have you?

A. I have.

Q. Now, to get at the reasons why the discrepancies may exist as to some of these companies, I note that opposite Assurance Company of America you have the word Henry W. Brown & Company stated under "Affiliations." What is the significance of that?

A. Henry W. Brown & Company were the United States Managers and General Agents for several companies in their office.

Q. And the distribution of their Missouri business between those companies on account of reinsurance arrangements between them might show a different distribution than in their annual statement figures?

A. Precisely.

Q. But as to the group of companies represented by that company should there be any difference as to the premium figures of the group of companies?

A. No, sir.

Q. And is there any difference as far as you know?

A. No.

Q. Did you check the figures of all these various companies which were submitted here in evidence against their annual statement figures as filed with the state to ascertain their correctness?

A. I checked them with their books.

Q. Yes. Take the case of the Citizens Insurance Company is that company connected with any group of companies having the same management in the same office?

A. Yes, sir.

[fol. 3863] Q. What companies are they associated with?

A. Hartford Fire.

Q. City of New York Insurance Company, what group is that associated with?

A. Home Insurance of New York.

Q. Continental Insurance Company, what group is that associated with?

A. Commonly known as the American Four.

Q. What are those companies?

A. The Fidelity-Phenix, the Continental, the American Eagle and the Farmers of Iowa.

Q. Now, the Firemen's Fund Insurance Company, what other companies in the same office and under the same management?

A. Well, that is the Home Fire and Marine.

Q. Well, without reiterating them any further, have you shown under the caption of "Affiliations" here, the other companies with which these various companies are affiliated and grouped?

A. I have.

Q. And in taking the distribution of their expense items as well as their premium items, was that distribution of expense as you took it and produced it here in evidence strictly according to the original books and records of the companies?

A. It was.

Q. And whether they were distributed strictly according to their books in the annual statements filed with the state, do you have any knowledge of that?

A. No.

Mr. Folonie: Now we will offer the comparative statement identified by the witness in evidence as Plaintiffs' Exhibit 1354.

[fol. 3864] (Whereupon said document so offered and received in evidence was marked Plaintiffs' Exhibit 1354.)

Mr. Folonie:

Q. I will ask you, Mr. Baty, whether the method by which you made the calculation of the unearned premium of these respective companies are accurate as you originally made it?

A. It was.

Q. Now, showing you another paper, which I will ask to have given the next consecutive Plaintiffs' Exhibit number, I will ask you whether this statement is a resume of the one just produced, showing the increase of the loss experience of the companies for the five years in question by adoption of the state's figures, stated percentagewise?

A. It is.

Mr. Folonie: We offer it in evidence as Plaintiffs' Exhibit of the next consecutive number.

(Whereupon said document so offered and received in evidence was marked Plaintiffs' Exhibit 1355.)

Mr. Folonie:

Q. Did you at my request make an examination of the books of the American Central Insurance Company, directing particular attention to the amounts paid by that company to various bureaus in the State of Missouri during the respective years 1917 to 1921, inclusive?

A. Yes, sir.

Q. Now, I will ask you whether you have also made an examination of the books of the Missouri Inspection Bureau so that you might explain to the court the differences, if any, between the two sets of books mentioned by Mr. McGee as to the statements to the state differing from the books of the Inspection Bureau?

A. Yes, sir.

[fol. 3865] Q. Can you state in what those differences of the amounts as shown on the American Central's books and on the books of the Missouri Inspection Bureau consist?

A. In 1917 the company's figures showed that they paid the Missouri Inspection Bureau $3,177.08, the Missouri Inspection Bureau reports $3,246.82, a difference of $69.74. This item was paid to the Bureau and placed on the books of the company in 1916, and was not received by the Bureau until January, 1917. That accounts for that difference.

In 1921 the books of the company show $6,654.35 paid to the Bureau, while the Bureau books show $5,294.63; the difference between these two amounts is $1,359.72, and this was an assessment that was paid by the company in December, 1921, and was received by the Bureau in January, 1922.

Q. In other words, these items went into one set of books in one year and were placed to their credit on the books of the other organization in the other year?

A. Yes, sir, that is right.

Q. Payments being made in December and credited in January of the succeeding year, is that correct?

A. Yes, sir.

Q. How many different bureaus are there to which the American Central made payment as shown on the books there?

A. There are twelve bureaus and associations.

Q. And you have listed here the amounts paid by each—paid to each by the American Central, and the year in which they were paid, have you?

A. Yes, sir. I would like to correct the number. I added two columns too many. There are ten instead of twelve.

[fol. 3866] You by mistake added in your total the two columns at the end?

A. By mistake added in the total the two columns at the end, yes, sir.

Mr. Folonie: We offer the exhibit in evidence.

(Said document so offered and received in evidence was marked plaintiffs' Exhibit 1356.)

Mr. Folonie:

Q. Have you here the total of the amounts paid for inspections and surveys by the American Central during these respective years, showing the total of them by months, showing what month they paid the respective bureaus?

A. Yes, sir.

Q. That is the detail of what we have already discussed?

A. This is the detail of that (indicating).

Mr. Folonie: All right. We will offer it in evidence.

(Said document so offered and received in evidence was marked plaintiffs' Exhibit 1357.)

Mr. Folonie:

Q. Now, are these figures which you have produced here in these exhibits of the American Central the same or different than the figures of the American Central, as you have previously presented them here in the testimony?

A. They are the same.

Q. This presents the detail of that which is included in the general item of inspections and surveys in the original exhibits here?

A. Yes, sir.

Q. Now, I will ask you whether as to other companies than the American Central the suggestion is made here that some companies have disproportionate or apparently disproportionate expense items, such as the Citizens Insurance Company and the Hartford Fire Insurance Company [fol. 3867] as to their expense ratios to premiums varying from those filed in the reports submitted and filed by the state at various time. Did you carefully calculate and ascertain the expense of all these various companies as shown by their books and records?

A. I did.

Q. And report them here correctly?

A. I did.

Q. And your figures are in accordance with their original books and records, are they?

A. Yes, sir.

Q. Whether the companies such as the Fidelity-Phenix and the Continental and the American Eagle, all in the same group, made their division of expenses in making their statements to the state company by company according to their books adopted some other method of distributing that expense between themselves, do you have any knowledge?

A. I did not go into that.

Q. But your figures are according to their books and records.

A. According to their books and records.

Mr. Folonie: Cross examine.

Mr. Barker: That is all, Mr. Baty.

(Witness excused.)

Mr. Folonie: It is agreed that if Joseph Button were present he would testify that he is and for more than ten years past has been Insurance Superintendent of the State of Virginia, and that on December 7, 1921, and for some time previously he was chairman of the Fire Insurance Committee of the National Convention of Insurance Commissioners; that he has during about ten years last been secretary of the voluntary association known as the National Convention of Insurance Commissioners; that as [fol. 3868] chairman of such Fire Insurance Committee of the National Convention of Insurance Commissioners, he did present, on December 7, 1921, to such National Con-

vention of Insurance Commissioners a report of the Fire Insurance Committee, and that the same is truly set forth as plaintiffs' Exhibit 1358 herein; that such report was voted upon by the National Convention, and that there were 23 votes cast in favor of the adoption of the report of said committee and two votes against its adoption, and one commissioner present not voting; that under the by-laws of such convention, the favorable action upon such report by 23 members made the same a valid enactment; that the whole membership of such convention consisted of insurance superintendents from each of the 48 states, and in addition a representative from the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Porto Rico, Philippine Islands and from the Canal Zone; that at a subsequent meeting a motion to rescind such action came up and failed of passage; and thereupon, upon motion of one of the members, a committee was appointed to further consider said report and report back to the convention, and the committee authorizedly appointed by the chair has not yet reported to the convention.

Mr. Folonie: The plaintiffs rest.

Which was all of the evidence produced on behalf of the plaintiffs, both oral and documentary.

The Referee: What saith the defendant?

Mr. Barker: The defendant has to rest.

[fol. 3869] Which was all of the evidence produced on behalf of the defendant, both oral and documentary.

And thereupon the further taking of testimony was by order of the referee closed.

Which was all of the evidence, oral or documentary, offered or admitted upon the hearing of the above-entitled cause.

And thereafter, and on the 5th and 6th days of September, 1924, such cause was argued before the referee at Kansas City, Missouri.

And thereafter, and on the 22nd day of December, 1924 being one of the days of the November term 1924, of this court, the said referee presented and filed in this court his report, which is in words and figures, as follows:

IN THE CIRCUIT COURT OF COLE COUNTY, MO.

[Title omitted]

REPORT OF JOHN I. WILLIAMSON, REFEREE—Filed December 22, 1924

Floyd E. Jacobs, John T. Barker, Attorneys for Defendant.

Bates, Hicks & Folonie, Hogsett & Boyle, Leahy, Saunders & Walther, Cockrill & Armistead, Attorneys for Plaintiffs.

This is a suit to review a rate reduction order. The plaintiffs are the Aetna Insurance Company and about one hundred and sixty other stock fire insurance companies doing business in the State of Missouri. The defendant is Mr. [fol. 3870] Ben C. Hyde, Superintendent of the Insurance Department of the same state.

The suit grows out of the following facts: On October 9th, 1922, the defendant, in the exercise of the authority vested in him by Section 6283 of the Revised Statutes of Missouri, 1919, made an order reducing the rates to be changed by the plaintiffs in the State of Missouri.

The order is somewhat lengthy, but the gist of it is as follows:

"* * * I have this day ordered a reduction of ten per cent in the rates now charged by the aforesaid companies on fire, lightning, hail and windstorm insurance business written in the State of Missouri, which reduction, in my judgment, will still leave said companies a reasonable profit after giving proper and reasonable consideration to the conflagration liability both within and without the state."

This order was to become effective on November 15th, 1922. Thereafter plaintiffs brought this suit to review the order above quoted. It is unnecessary to make any extended reference to the pleadings. In substance, plaintiffs attacked the rate reduction order on the ground that it is confiscatory and defendant countered with the charge that plaintiffs' expenses were excessive and improper, and that they had in fact received large returns from their business,

and that even if the rate reduction order were enforced, they [fol. 3871] would still earn more than a reasonable profit. By agreement of parties a referee was appointed, and was directed to hear the evidence and report the same to the court, together with his findings of fact and conclusions of law thereon.

The evidence has been heard; the parties have filed elaborate and instructive briefs, and have been fully heard in oral argument. The evidence, in ten volumes, is filed herewith.

I

It may be well, as a preliminary, to outline the scope of this controversy, to refer to certain basic statutes, and briefly to dispose of some pertinent legal propositions about which there is no dispute.

By Section 6283, supra, it is provided that:

"The superintendent of insurance * * * is hereby empowered to investigate the necessity for a reduction of rates, and if, upon such investigation, it appears that the result of the earnings in this state of the stock fire insurance companies for five years next preceding such investigation shows there has been an aggregate profit therein in excess of what is reasonable, he shall order such reduction of rates as shall be necessary to limit the aggregate collections by insurance companies in this state to not more than a reasonable profit. * * * In determining the question of rates and profits in accordance with this article, the superintendent of insurance shall give proper and reason-[fol. 3872] able consideration to the conflagration liability, both within and without this state."

The five years immediately preceding the investigation is thus made a standard of comparison—a sort of test period—and hereafter will be so called.

By another section (6284 R. S. Mo. 1919) it is provided in substance that the findings of the superintendent are reviewable in the courts; that in such review "the entire matter shall be treated and determined de novo" and "the burden of proof as to the unreasonableness or the injustice of any order made by the superintendent of insurance shall rest upon the party or company appealing from any such order."

These statutes were adopted in 1915. They are the only statutes relating to rate-making by the superintendent and review by the courts, except an amendment to Section 6283, supra, adopted in 1923. This amendment will be noted later.

The right of a state to regulate fire insurance rates is now well settled. This proposition, urged in behalf of defendant, is not disputed by the plaintiffs. If authority for this proposition be desired, it may be found in the following cases: German Alliance Insurance Co. v. Kansas, 233 U. S. 389 l. c. 412; State ex rel. Waterworth v. Harty, 278 Mo. 685, l. c. 691.

The correctness of the order made by the superintendent of insurance is presumed. This follows as a necessary consequence of our statute (Sec. 6284 R. S. Mo. 1919).

[fol. 3873] II

At the outset, the defendant vigorously asserts that the plaintiffs have failed to carry the burden of proof imposed upon them by the statute, supra, and that that failure forecloses any consideration of this case except upon that one point.

In support of this contention defendant asserts it was the duty of plaintiffs to "make a full and complete disclosure of every dollar received and every dollar spent." Defendant says that "when the state attempted to inquire into the reasonableness of the expenditures of these insurance companies, their officers at New York were instructed by counsel for plaintiffs not to answer any question as to what salary they received or what commission they received."

The great weight of authority seems to be in favor of the rule that in such proceedings as the present, the duty rests upon the party attacking the order in question to make a frank disclosure of all revenues received and all disbursements thereof, whether by way of losses, dividends, corporate expenses, or otherwise.

(Chicago & Grand Trunk Ry. Co. v. Wellman, 143 U. S. 339, l. c. 345.)

(Minnesota Rate Cases, 230 U. S. 352, l. c. 465.)

(State ex rel. v. Adams Express Co., 85 Neb. 25, l. c. 35.)

This showing, as to all material matters, must be supported by evidence at least sufficient to make out a prima facie case in favor of the reasonableness of such expenditures. This rule seems to be supported by reason as well [fol. 3874] as by authority. It is obviously just. Plainly it would be farcical to hold that, in such cases, nothing further is incumbent upon the plaintiffs than to make a showing of gross receipts and gross disbursements and stop at that. Unreasonable minuteness is not to be required, nor is a failure to disclose the particulars of any disbursement a matter of any moment, unless the amounts involved are sufficient materially to affect the ultimate result. In these cases, as in most others, the facts in the particular case on trial must be considered.

The question then arises whether or not the plaintiffs in this case have met the requirements of the rule above laid down. Defendant makes no question as to the showing made by plaintiffs concerning their receipts. His attack is leveled at the evidence concerning disbursements. He challenges generally all of the expenses claimed to have been incurred and, specifically he attacks the evidence as to salaries, taxes and excess commissions. He also claims that investment earnings must be considered. These specific matters will be disposed of first.

The record, as to salaries, discloses the following facts: During the hearing in New York, inquiry was made by defendant of three witnesses, and only three, as to the salaries paid by their companies, to-wit, the Home, the Continental and the American Central, to such of their officers and employes as received salaries in excess of $5,000.00. Mr. Chapman, president of the American Central Company, stated that his salary was $21,000.00 per annum, and that [fol. 3875] the total paid other such officers in his company would exceed $50,000.00 additional per annum. Mr. Wilfried Kurth, vice-president of the Home Company, produced and filed a table showing the number of officers of that company receiving salaries of more than $5,500.00 each, per annum, for each of the five years in question; namely, from 1917 to 1921, inclusive, and the total amount paid in salaries to said officers in each of said years. This table does not show the amount received by any one individual. It does show that, for example, in the year 1920, there were

eleven such officers; that their salaries averaged $22,518.18, and that the total disbursements to such officers in that year was $245,000.00. Mr. Robertson, president of the Continental, produced a similar table, covering the same period, by which it appears that in 1920, for example, his company paid in salaries of more than $5,000.00 a total sum of $205,096.86, or an average of $10,254.80 for each of such officers, of whom there were twenty.

Defendant specifically demanded of plaintiffs a statement of "the separate salary of the president, board of directors, chairman of your board, the officers of your corporation, including services for all purposes, and whether associated with an allied corporation or not, bonuses paid, commissions paid, allowances of all forms paid, so that it will show the total sum received by each on all forms of allowances, whether called salary or otherwise." This demand was refused. Plaintiffs then offered to show to counsel for de-[fol. 3876] fendant the book entries revealing the compensation of any and all individual officers or employees, upon condition, however, that this information should not be carried into the record. This offer the defendant declined to accept. The matter was carried no further.

The statute with respect to the burden of proof is general in its nature. The pertinent provision is simply that "the burden of proof as to the unreasonableness or the injustice of any order made by the superintendent of insurance shall rest upon the party or company appealing from any such order." Does the failure of plaintiffs to disclose the amounts of the salaries of individual officers involve a failure of proof within the meaning of the statute? Clearly not, unless that failure is so far-reaching in its effect that, absent such detailed information, the unreasonableness or injustice of the order can not be made to appear. Otherwise stated, the state, in this proceeding, is not concerned about whether the gross sum appropriated by the plaintiff companies for salaries of certain or all of its employees is equitably distributed among those employees or not. That is a matter of private concern. It is the total amount spent in salaries, and that only, that concerns the state. Itemized details are important only in so far as they tend to show the reasonableness or unreasonableness of the expenditures. The evidence relating even to the gross sums paid in salaries

applies to three of the plaintiff companies only. As to the other plaintiffs, salaries are mingled indistinguishably with other expenses. This case deals with the plaintiff companies [fol. 3877] collectively and not individually. It is the aggregate expense of all of them which is here involved, and that expense is involved only in so far as it affects rates. The materiality of the failure to show the exact amounts paid in salaries may be affected by that fact.

It appears from the evidence that the salaries here in question are included in the classification called head office expenses. These expenses are apportioned among the various states, including this state. Only that part of head office expenses which is apportioned to Missouri, is involved in this case. Unless plaintiffs are permitted to charge as expense that part of head office expenses so apportioned to this state, then the question as to the amount of the salaries here involved is eliminated from consideration. Whether or not this question can be so eliminated depends upon the total amounts of receipts and expenditures in this state of all of the plaintiff companies.

Turning then to the gross receipts and expenditures in this state of all of the plaintiff companies during the period in question, the record reveals the following facts:

The plaintiffs collected in premiums written on fire, lightning, hail and windstorm insurance in this state the sum of $71,347,517.00. This sum is the total of written premiums, as distinguished from earned premiums, and of course, takes into consideration the underwriting experience only of the plaintiff companies. A ten per cent reduction in written premium rates on fire, lightning, hail and windstorm insurance, for the five years in question, would have de- [fol. 3878] prived plaintiffs of premiums aggregating $7,134,751.00. Plaintiffs claim actually to have lost in their underwriting experience during that period the sum of $7,010,200.00. These two sums total $14,144,951.00. This total is the sum which plaintiffs would have lost in the test period had the reduction order then been in force (this, of course, assumes that plaintiffs claimed loss of $7,010,200.00 actually was lost, a point which will be decided later.)

The salaries which the defendant demanded should be separately stated are, as the demand shows, the salaries of the chief officers of the various companies. Portions of

these salaries, in the calculations given in evidence in this case, are allocated to Missouri, in the proportion that the earned premiums in Missouri bear to the total earned premiums of the companies. In the evidence these salaries are included in the classification of head office expenses, but this item includes more than Missouri's portion of these salaries. It includes all of the expenses apportioned to Missouri except the expenses shown under the heads "Federal Income Tax" and "Miscellaneous." The sum total of these three classifications is $6,938,489.00.

Defendant claims that plaintiffs have taken credit for certain specified expenses which should not be allowed because, as to them, plaintiffs have not carried the burden of proof. Since this objection relates to taxes and head office expenses apportioned to Missouri, which item includes salaries, as above noted, it may be well to state definitely what expenses are included in these apportioned expenses. It appears [fol. 3879] from the evidence that each of the plaintiff companies maintains a head office. Most, if not all, of them maintain offices elsewhere as well. In the insurance world the entire United States is divided into departments, each department embracing several states. This state is one of fourteen states in the Western Department. The head office for this department is in Chicago. The phase "head office expenses" includes the expense incident to the principal office of the various companies and also the expense of the principal office maintained in each department. These expenses include all salaries paid officials at these offices. Other items of expense also are a part of head office expense, but all expenses which can be definitely traced to a given state are excluded from head office expenses and are charged against that state. The result is that under head office expenses are charged only such expenses as are incidental to the whole underwriting business of the companies, such, for example, as the salary of the president and other chief executive officers. These expenses are apportioned among the several states in the proportion that the underwriting business done in a particular state bears to all of the underwriting business of the company.

Defendant also objects to certain expenses charged by plaintiffs on the ground that they are not proper expenses, such as excess commissions charged in St. Louis. And de-

fendant contends that certain other sums; to-wit, interest earnings on unearned premium reserves in this state, are profits which should be charged to plaintiffs, but which they have not charged. As to all of these matters, defendant's [fol. 3880] claims may be tabulated as follows:

Apportioned Head Office, Federal Income Taxes and Miscellaneous Expenses.	$6,938,489.00
Alleged Excess Commissions.	2,496,715.00
Federal Tax on Premiums	628,186.00
All other taxes paid in Missouri	2,174,959.00
Interest Earnings on Unearned Premiums Reserves in Missouri	2,418,596.00
Total	$14,656,945.00

(The last item is taken from the reduction order, though not supported by the evidence.)

Defendant also claims that other investment earnings, not tabulated above, should also be included. They are excluded for reasons hereinafter set forth.

If, as plaintiffs claim, they lost during the test period the sum of $7,010,200.00, and if, as is indisputable, the reduction order, had it been in force, would have caused an additional loss to plaintiffs of $7,134,751.00, then plaintiffs would have suffered a total loss, during the test period, of $14,144,951.00. If all that defendant claims, as to the specific items above mentioned, be allowed, plaintiffs would have made a net profit during the test period of $511,994.00. This sum is less than seven tenths of one per cent on the earned premium basis, and, it is plain, could not be held to be a reasonable profit. In so disposing of the amounts above tabulated, all head office expenses apportioned to Missouri are excluded from consideration. In effect, this is to sustain defendant's objection in so far [fol. 3881] as it relates to salaries, the amounts of which were not disclosed. This is also true as to the other items, which, including apportioned head office expense, make up the total of $14,656,945.00. The result is that it is quite unnecessary to pass upon the validity of defendant's objections to the matters above set forth, because, granting all that is claimed in this respect, these amounts alone do not justify the reduction order.

Defendant objects to the evidence relating to all of the expenses of the plaintiff companies on the ground that "plaintiffs refused to show what their expenses were, or that they were reasonable."

The total receipts of the companies, on the premiums written basis, during the five-year period in question, in Missouri alone, aggregate more than $83,000,000.00, or nearly $75,000,000.00 on the earned premium basis, and their total expenditures during that period in this state aggregate nearly $82,000,000.00, on the basis of incurred losses and expenses, or more than $80,000,000.00 on the paid losses and expenses basis. The transactions in which these amounts were received and disbursed include all manner of items, both large and small. The expenses are shown separately for each year of the period, and for each year, they are shown under sixteen separate classifications; to wit: Loss Adjustments, Agents' Compensation, Field Supervision, Rents, Furniture and Fixtures, Maps, Inspections and Surveys, Federal Tax on Premiums, All Other Taxes, Miscellaneous, Incurred Expenses, Paid Losses, Incurred Losses, Head Office Expenses, Federal Income Tax [fol. 3882] and Miscellaneous, the last three being expenses apportioned to Missouri, and all of the others being expenses claimed actually to have been paid in Missouri.

The foregoing classifications are drawn from the tabulation which summarizes all of the plaintiffs in Missouri during the test period, including therein expenses apportioned to this state although not actually paid here, such as Head Office expenses. This tabulation is itself compiled from tabulations made by each of the plaintiff companies showing the expenditures of each company in this state for each of the five years in question. The classification shown in these individual tabulations is more exhaustive than that used in the tabulation first above mentioned. In the individual tabulation expenses are classified under nineteen general headings. Some of these headings are subdivided, so that there are thirty-four separate classifications in all. The following is the form of tabulation of expenditures of the plaintiff companies. It shows fully the extent to which the classification of expenses was carried. It covers each of the five years here involved and also total amounts for the whole period.

"Expenses State of Missouri

Name of Company: ——.

Items

Actual:

1. Loss Adjustment Expenses
2. Agents' Compensaton including brokerage
3. Agents' Allowances

[fol. 3883]

4. Field Supervisory Expenses:
   - (a) Salaries of Field Men
   - (b) Expenses of Field Men
   - (c) Executive — Traveling expenses other than Field Men

5. Rents
6. Furniture and Fixtures
7. Maps, including corrections
8. Inspections and Surveys (Note No. 1)
9. Federal Taxes
10. Taxes, Licenses and Fees:
    - (a) State, County and Municipal.
    - (b) Insurance Department.
    - (c) Fire Department
    - (d) Fire Patrol and Salvage Corps
    - (e) All other Taxes, Licenses and Fees
11. Postage, Telegraph, Telephone, Exchange & Express
12. Legal Expense, Excluding Legal Expenses on Losses
13. Advertising and Subscriptions
14. Printing and Stationery
15. Miscellaneous Expenses (Note No. 2)
16. Agents' Balances, Charged off

Total Actual

Apportioned Expenses (Note No. 4):

17. Home Office Salaries and Expenses (Note No. 3) including:

(a) Rents
(b) Furniture and Fixtures

[fol. 3884]

(c) Maps, including corrections
(d) Inspections and Surveys, including underwriters' boards and associations, but excluding such expenses as are charged against any individual state
(e) Postage, Telegraph, Telephone, Exchange and Express
(f) Legal Expenses, except as charged in items 1-16
(g) Advertising, Printing and Stationery

18. Federal Taxes
19. Miscellaneous

Total

Explanation Incurred Expenses

	$
Expenses due and unpaid at Dec. 31, 1916	
" " " " " " 31, 1917	
" " " " " " 31, 1918	
" " " " " " 31, 1919	
" " " " " " 31, 1920	
" " " " " " 31, 1921	
" " " " " " 31, 1922	

Explanation Incurred Expenses

The above figures should be the corresponding entries for Missouri as reported in the Annual Statements under Liabilities.

Line 26 Salaries, Rents, Expenses, Bills, Accounts, Fees, etc.

[fol. 3885] Line 27 Estimated Amount hereafter payable for Federal State and other taxes.

Line 28 Contingent Commissions or other charges due or accrued.

Explanation Paid Expenses

Note 1. Item 8.—Should include Missouri Inspection Bureau, Missouri Audit Bureau, St. Joseph Fire Prevention Bureau and similar expenses actually paid in Missouri.

Note 2. Item 15.—Should include other expenses not included in items 1 to 16, inclusive, but actually paid in Missouri, and not pro-rated.

Note 3. Under Item 17 (d) include such Bureau expenses as The Union, Western Insurance, National Board, Oil Association, Sprinklered Risk Association, covering operations in Missouri and which must be pro-rated. Do not include expenses covered in item 8 or Bureau or Association expenses such as Illinois Inspection Bureau, which are directly chargeable to any other individual state.

Note 4. Please give the methods of apportionment and the percentage obtained by said method.

Note 5. Item 18—Do not include any Federal Taxes included in Item 9."

Having thus itemized their expenses to the extent shown, plaintiffs then proved the ratio of these expenses separately and collectively and introduced numerous witnesses experienced in the business of fire insurance who testified that the ratio of expense to the volume of business was reasonable. They also introduced evidence as to the ratio of [fol. 3886] expenses incurred in other lines of business in producing and distributing various commodities, such as food and clothing. These expense ratios appear in some instances to be lower and in some instances higher than in the insurance business. The probative value of this last mentioned evidence is probably slight. By these methods plaintiffs sought to show that their expenses were kept within the limits of reason. The individual tabulations last above mentioned showing the expenses of each company,

are drawn from the books of the companies. These books appear to have been kept in the usual course of business, for the information of the plaintiffs, and it is not disputed that these tabulations correctly summarize the contents of the books so far as the matters shown in the tabulations appear in the books.

It is difficult to know what more plaintiffs could have done, unless they had taken the expenses up by single instances and had shown the amount and reasonableness of each expenditure. The statute imposes the burden of proof upon plaintiffs, it is true, but the statute is not to be construed captiously or oppressively, but reasonably with an eye to the rights of both parties. Plaintiffs in this proceeding are bound to make out a prima facie case showing the reduction order to be unreasonable. If such a showing is made, with the degree of minuteness employed in this instance, and if the defendant desires to question any particular item of expense claimed, it would seem but fair that, at least, he should make that fact known during the hearing of the evidence, and call for additional information with re- [fol. 3887] spect to the particular items challenged. Otherwise, the plaintiff would be bound to take up, item by item, all of their expenditures and show the reasonableness in each instance of the expense which plaintiffs claim should be allowed. The itemizations furnished by the plaintiffs in this hearing are more comprehensive than the reports required to be made annually by plaintiffs upon blanks prepared by the Insurance Department of Missouri and filed under its supervision. There are more than thirteen hundred exhibits offered in evidence in this case on behalf of the plaintiffs. Most of these exhibits contain numerous items, in some instances several hundred. They are so numerous, and from the nature of the business, are necessarily so complicated as to require the assistance of trained accountants properly to understand them. In the absence of a showing of some particular matter in which these exhibits lack definiteness and certainty it would be an endless task to undertake to analyze them. Further to multiply them would be to darken understanding. In a business so large in the aggregate, as the business of plaintiffs is shown to be by the evidence in this case, there must be large expense necessarily and honestly incurred. The law presumes good faith, and that presumption is not limited to

natural persons. For these reasons, it seems proper to hold that the plaintiffs have performed their duty when they make out a prima facie case as to expenses incurred, and in the absence of a specific attack by defendant upon such expenses as are shown, it will be assumed that the expense shown by the evidence was incurred in good faith, and was [fol. 3888] reasonable in amount and proper in character, nothing to the contrary appearing in the evidence

Dayton-Goose Creek Ry. Co., 44 U. S. Sup. Ct. Rep. 169, l. c. 174.

Defendant's contentions as to the amounts specifically challenged, as above set forth, are overruled as immaterial for the reasons set forth in discussing them, and his general attack on all expenses claimed by plaintiffs is overruled upon the theory that, as to all matters not covered by defendant's objections to specific items and amounts, plaintiffs have made out a prima facie case. What has been said disposes of defendant's contention that plaintiffs have not borne the burden of proof.

Neither the exclusion from consideration of the expenses nor the inclusion of the investment earnings above mentioned should be construed as a finding that those sums respectively ought not to be allowed as legitimate expenses, or ought to be charged as earnings. It is done merely to demonstrate that, whether they are excluded or included, the result in view of the amounts here involved, would be the same in either event, so far as the validity of the reduction order is concerned.

III

A point vigorously in dispute in this case is as to the proper method of ascertaining whether or not a stock fire insurance company has made or lost money during a given period. Plaintiffs affirm that, in determining that fact, nothing in the form of income can be considered save the net income from insurance underwriting activities, and by [fol. 3889] this means earned premiums as distinguished from merely written premiums and incurred losses and expenses as distinguished from paid losses and expenses. Defendant asserts that all activities of the companies must be considered, and that the calculations must be based on

written premiums rather than earned premiums, and on paid losses and expenses as distinguished from incurred losses and expenses.

In stock fire insurance companies, to which class all of the plaintiffs belong, the insured, generally speaking, buys term insurance. The term usually is one, three or five years. Longer and shorter term policies are written but they constitute but a small proportion of the business. The premiums for this insurance are commonly paid in advance. Such premiums constitute what are called written premium. The insurance companies, however, do not count such premiums as fully earned until the policies have fully expired. Until the policy has fully expired, some part of the premium, paid in advance, may have to be repaid to the insured, as in the case of cancellations and, perhaps, in other instances. The amount so to be refunded can never be known until the happening of the event which makes refunding necessary. The amount refunded depends, for the most part, if not entirely upon the length of time the policy has been in force. For these reasons insurance companies are required in this state, and in most, if not all, of the other states, to maintain an unearned premium reserve fund (Sec. 6222, R. S. Mo. 1919). This fund is not available for distribution as profits in the form of dividends or [fol. 290] otherwise. It is a fund which constantly varies in amount, increasing and decreasing as the volume of business increases or decreases, but always in existence until the last policy has fully matured. For these reasons, plaintiffs contend that the amount of the written premiums is not a factor justly to be considered in determining the amount of the profits, but that the earned premiums only can be considered. In this contention plaintiffs are clearly right. The statute under which the reduction order was made in this case plainly so indicates. That statute calls for "the result of the earnings," in the statute as originally enacted, and for a consideration of "all earnings" in the amendment of 1923. Money paid this year for the assumption of a risk next year clearly has not been earned. It will become earnings only as the insurance period passes, and cannot be fully earned until that period has fully elapsed. The conclusion, therefore, appears to be sound (omitting other earnings, for the present), that earned premiums

rather than written premiums constitute the proper factor to be considered in determining profits or losses. Defendant's contention on this point should be overruled.

IV

Plaintiffs assert that in determining the amount of the profit or loss for a given period, all incurred losses are incurred expenses must be considered. Defendant insists that only paid policies and paid expenses properly enter into the problem. The result of the two methods apparently differ but little in actual practice. The weight of the evidence in this case shows expenses are commonly paid prac- [fol. 3891] tically as they accrue. So far as losses are concerned, an estimate of the amount of a given loss is made upon the books as soon as the loss is reported. When the claim for that loss has been paid that amount is also entered. It appears that the estimated loss frequently varies from the actual loss, sometimes being larger and sometimes being smaller, but during a period of years, the difference between estimated and actual losses in but slight—not sufficient in any event to influence materially the question of rates in any way.

However, as between the two methods it does not seem difficult to decide which should be adopted. Common honesty demands that one who has incurred an obligation should make provision for its payment. Even Hamlet, though mad, inquired "May one be pardoned and retain the offense?" One may not contract a debt and count it a profit. If a man erects a building at a cost of $50,000.00, and in doing so, pays $25,000.00 for labor and material, and then sells it for $50,000.00 leaving incurred but unpaid bills in the sum of $25,000.00 can he be said to have made a profit of $25,000.00, or any other sum? The question answers itself. He cannot. Incurred obligations, if just, must be paid, and there can be no profits until they are paid. It follows that the incurred basis is correct.

V

Plaintiffs contend that in determining the underwriting [fol. 3892] profits or losses, the proper method is to deduct from earned premiums, the sum of incurred losses and ex-

penses. The remainder, if any, is the profit. If incurred losses and expenses exceed such premiums, the difference is the loss. The earned premiums of all of the plaintiff companies in the State of Missouri during the five-year period in question amounted to $74,813,816.00. The incurred losses amounted to $48,593,664.00, and the incurred expenses amounted to $33,230,352.00 after deducting investment expenses. This makes a total of incurred losses and expenses of $81,824,016.00, and shows a loss to the plaintiff companies for the five-year period in question of $7,010,200.00. This calculation, of course, assumes the correctness of the item of incurred expenses. The great weight of the evidence sustains plaintiffs' contention that the method of calculating profits above indicated is practically universal in the fire insurance business. This method of calculation is also recognized by the Insurance Department of this state to the extent that it requires an annual report of the plaintiff companies, which report is required, among other things, to set forth a statement of their underwriting experience upon the earned and incurred basis. The record in this case further discloses that, during the five years in question here, there was in existence a body called the National Convention of Insurance Commissioners, the membership of which was made up of the insurance commissioners of the various states of the Union, and the earned and incurred basis of calculating the profits derived from the underwriting business of insurance companies was of-
[fol. 3893] ficially adopted as the correct basis by that body at a meeting held in New York on December 7th, 1921. This action of that meeting is not cited as authority for any purpose, but merely as indicative of the prevailing custom and usage in the fire insurance business. This precise question apears to have been held in judgment by but one court of last resort in the United States. The point was involved in the case of Bullion v. Aetna Insurance Company, 151 Ark. 519 (237 S. W. l. c. 718). That case was a proceeding by various fire insurance companies to secure an adjudication of the duties of the Insurance Commission of Arkansas under a statute which provided, in substance, that the Insurance Commissioner should compile the figures showing the results of the business of stock fire insurance companies during a five year period preceding December

31st of each year; and further provided that "if it appears that for such five-year period the stock fire insurance companies, doing business in this state, have made an aggregate underwriting profit in excess of five per cent, the Insurance Commissioners shall have the power to order such reduction in rates as will reduce the underwriting profit on business thereafter done to five per cent" (Section 5960, C. & M. Digest Ark.).

Under the authority of this statute the Commissioner of Insurance of that state made an order requiring all stock fire insurance companies to reduce their rates. He did so upon the theory here contended for by the defendant; that is to say, he took into consideration premiums written as distinguished from premiums earned, and deducted there- [fol. 3894] from losses and expenses paid as distinguished from losses and expenses incurred. The result of these calculations showed that the insurance companies interested in that proceeding had earned an underwriting profit of more than five per cent, and the Commissioner thereupon made an order reducing their earnings to five per cent. This method of calculation was attacked in the Bullion case, supra, for the same reasons waged in a like attack in this case. It will be noted that the Arkansas statute refers to "an aggregate underwriting profit." Our own statute, touching upon these matters, refers to the earnings of the stock fire insurance companies. In substance, the Arkansas statute fixes five per cent as a reasonable underwriting profit, and is obviously confined to the underwriting experience of stock fire insurance companies. The Missouri statute is somewhat broader in that in Missouri the Superintendent of Insurance is authorized to take into consideration the earnings of the insurance companies, and he is empowered to make such a reduction as shall limit the profit of the companies to "what is reasonable," but in so doing underwriting profits must be considered, and hence must be ascertained in this proceeding. In the Bullion case, the court held that underwriting profit is arrived at by deducting from earned premiums all incurred losses and incurred expenses (Bullion v. Aetna Insurance Company, 151 Ark. 519, l. c. 526).

The same question arose in an English case entitled Sun Insurance Office v. Clark, an opinion rendered by the House

of Lords in 1912. The question arose under the construction of the Income Tax Act of 1853. It involved the ques- [fol. 3895] tion of whether or not the whole premium income of the company should be considered, or only the earned premiums. In the opinion rendered in that case by Earl Loreburn, L. C. (Appeal Cases, Law Reports, 1912, p. 443, l. c. 452), in speaking of the written and paid basis for which defendant contends in the instant case, it is said that the method "of merely taking for each year the sum total of the premiums received and the sum total of the losses paid, and subtracting the one from the other without regard to the fact that the premiums cover risks running on into subsequent years and the losses include losses arising out of contracts made in previous years * * * is, of course, not precise or scientific." Further, in the same opinion, the same writer, referring to the earned and incurred basis, says that it "must be applied here for the plain reason that upon the materials before us, it is the fair and only way presented to us by which the truth can be approximately attained" (l. c. 453).

In a concurring opinion in the same case Viscount Haldane said: "As Bray J. puts it, the case is analogous to one in which if goods are bought their value cannot be treated as profit without deducting the value of the liability to pay for them which the buyer has incurred" (l. c. 456) (Bray J. had decided the question in favor of the insurance company in the court below).

In the same case Lord Alverstone said:

"The appellants claimed that inasmuch as the premiums on such policies cover a period beyond the financial year [fol. 3896] the total amount of premiums on such policies cannot be treated as ascertained profits, as the company may be called upon to pay losses under and by virtue of the contract still existing.

It is not disputed that as a matter of principle the claim of the appellants is well founded. Premiums are not profits or gains, they are receipts which must be brought into account, and out of which, after proper deduction for losses, profits will accrue. * * *"

(l. c. 457.)

He concurred in the judgment of the lower court, applying the earned premiums and incurred losses and expenses theory. Lord Atkinson, also concurring, said:

"Now, what is the service which a fire insurance company renders to each insurer in consideration for the premium it receives? It is only by rendering this service in each case it earns these receipts. The service consists in indemnifying the insurer against loss by fire during the continuance of his policy. The company is entitled to deduct what it will cost it to perform that service. In any given case where a fire occurs the loss, and therefore the cost of the service by which the premium is earned, may and almost certainly will vastly exceed the premium, but in the aggregate of all the policies the aggregate cost will, of course be much less than the aggregate premiums. The difficulty of the position consists in this, that until the time [fol. 3897] for which a policy is to remain effective has expired, nobody can tell precisely how much the service will cost. Yet until that time has expired the service for which the company has been paid has not been completely performed. If the accounts of the company are to be rendered before the date of expiry, then some division of the premium must be made, and the portion to be appropriated to the service already rendered ascertained, the balance being appropriated to that portion of the service which is to be performed thereafter. I think the description 'unearned premium,' which has been used to describe this latter portion, is a very appropriate and accurate description" (l. c. 403).

It will be noted that in the Sun case the House of Lords leans to the opinion apparently that, to use the words of Lord Atkinson, "some division of the premium must be made and the portion to be appropriated to the service already rendered ascertained, the balance being appropriated to that portion of the service which is to be performed thereafter." The net result of the opinion in the Sun case seems to be that in the judgment of the House of Lords the question of what constitutes the profits in any given year, absent as here a statutory direction as to the method of computing, is a question of fact; that all

methods discussed in that opinion were more or less unsatisfactroy, including both of the methods involved in the case at bar; that no method furnished an entirely accurate and satisfactory result, and that method should be adopted [fol. 3898] which most nearly approximates substantial justice. In characteristic British fashion, the House of Lords, in the Sun case, "muddled through," and as a matter of fact, affirmed the judgment of the trial court which had adopted the earned and incurred method.

There is no substantial dispute as to the amounts expended by plaintiffs on losses. In effect, all items of expense specifically challenged by defendant, that is, apportioned head office expenses, excess commissions and taxes, have been excluded from consideration, as has been pointed out. Except as to these items of expense, the amounts claimed by plaintiffs to have been expended, in the payment of losses and expenses are accepted as correct. For reasons heretofore stated, it seems plain that the calculation to ascertain the amount of profits or losses should be made on the basis of earned premiums and incurred losses and expenses.

This calculation however involves another matter about which a question exists, to wit: the proper method of ascertaining the amount of earned premiums. The method employed by plaintiffs is as follows: To the unearned premiums at the beginning of the period add the premiums written during the period, and then deduct from that sum the unearned premiums at the end of the period. The balance thus obtained represents the earned premiums for the period in question. From the sum thus obtained, according to plaintiff's theory, should also be deducted the losses and expenses incurred during that period. The result is the net profit or loss. If the business is conducted [fol. 3899] on an ascending scale, then the sum deducted as unearned premiums at the end of the period will be larger than the sum which was added as unearned premiums at the beginning of the period. And, vice versa, if the business is conducted on a descending scale, then the sum to be deducted at the end of the period will be smaller than that which was added at the beginning of the period. Admittedly this method is not entirely accurate. Apparently

mathematical accuracy in this matter is difficult, if not impossible, of attainment—particularly in a company doing an extensive business, and more especialy when, as here, many companies are involved. This is true because the amount of the earned premiums fluctuates hour by hour, with the passage of time. A calculation is necessary to determine at any given date the amount of the earned or unearned premium on any given policy, and in order to obtain an accurate result it would be necessary to calculate all of the policies as of the same moment of time. In the pending cause, in order to obtain an entirely accurate result a calculation would have to be made on every outstanding policy of every one of the one hundred and sixty companies which are plaintiffs in this suit, as of the last day of the test period. This is impracticable. The general principle involved in the method adopted by plaintiffs in this case was approved in the Sun Insurance Company case, supra. In that case the amount which was deducted at the end of the test period of three years was 40% of the yearly written premium receipts. In the case at bar plaintiffs deduct all of the unearned premiums at the end of the [fol. 3880] five year period after having added all of the unearned premiums at the beginning of that period. The Sun case does not seem to undertake to establish any general rule, nor to fix any percentage of deduction, as a matter of law.

In the Sun case, supra, Lord Alverstone said:

"If the actual amount of the premiums received in any financial year were substantially constant the assessment of gains and profits after the second year would not be affected; but the business of the appellants was an increasing business, and for the three years 1902, 1903 and 1904 the increase in the amounts reserved in respect of unexpired risks, being 40 per cent. of the premium income, averaged 18,788l. per annum.

The only matter in dispute was the right of the appellants in estimating the profits or gains to make a deduction in respect of the outstanding premiums due to increased business during the three years under consideration. The matter was investigated by the Commissioners of Income Tax, who after hearing evidence, were of opinion that

the company was entitled to carry forward a percentage of fire premiums in one year in respect of unearned premiums which did not form part of the profits of the year. It was not disputed by the surveyor of taxes that if the company were legally entitled to such an allowance, he was not in this appeal in a position to contest that 40 per cent was an accurate estimate to reserve, and the commissioners [fol. 3901] found as a fact that in the case of the Sun Fire Insurance Office 40 per cent was a reasonable and proper allowance. It was not seriously contested by the Attorney-General that on principle the appellants were entitled to make some deduction, but he contended that as a matter of the law no deduction was permissible in respect of unexpired risks, and he further contended that the decision of your Lordships' House in the case of General Accident Fire and Life Assurance Corporation v. McGowan, (1) had laid down as a principle of law that no such deduction could be permitted. With regard to the justification for such a deduction it is quite unnecessary to state any reasons. Bray J. and the members of the Court of Appeal have expressed in the strongest terms their opinion that some such deduction ought to be made."

(1. c. 457.)

The testimony of numerous witnesses on behalf of plaintiffs is uniform to the effect that the method adopted by plaintiffs is one of long standing in the insurance world, is in general use, is practical, attains substantial accuracy, reflects the truth as to solvency or insolvency of the insurance company and is less open to objection than any other known method. The great weight of the evidence in this case supports these views. This method is therefore, though with doubt and hesitancy, and with recognition of its imperfections, approved for lack of a surer guide to the truth. It does not satisfy, but no practical known method does satisfy.

[fol. 3902] VI

In support of his contention that the calculations in this proceeding must be upon the basis of written premiums, paid losses and paid expenses, defendant urges that the

Insurance Department, ever since the passage of this act in 1915, has interpreted it to mean a calculation on that basis. The testimony of various witnesses, including former insurance superintendents, shows that, in fact, that has been the departmental interpretation.

In Folk v. St. Louis, 250 Mo. 116, l. c. 141, the Supreme Court said:

"The actual and practical interpretation placed upon constitutions and statutes by public officers charged with their execution is very persuasive upon the court (Westerman v. Supreme Lodge of K. P., 196 Mo. 670, l. c. 709). Such practical construction is usually adopted by the courts when the meaning of the constitution or statute so construed is doubtful."

Under what circumstances resort will be had to departmental interpretation, appears in a terse paragraph in United States v. Hill, 120 U. S. 169, wherein that court says:

"From Edwards v. Darby, 12 Wheat. 206 to Jacobs v. Pritchard, Trustee, 223 U. S. 200, it has been the settled law that when uncertainty or ambiguity, such as we have here, is found in the statute great weight will be given to the contemporaneous construction by departmental offi- [fol. 2863] cials, who were called upon to act under the law and to carry its provisions into effect, especially where such construction has been long continued, as it was in this case for almost forty years before the petition was filed."

See also U. S. v. Hammers, 220 U. S. 220. These decisions were cited with approval by the Supreme Court of this state in State ex rel. v. Cupples Company, 283 Mo. l. c. 144-5. The Missouri doctrine is that such interpretations are persuasive only. (In Re Docket 266, Mo. l. c. 54). Departmental interpretations is resorted to only in the case of doubtful or ambiguous statutes, nor then unless that construction has extended over considerable periods of time. The statute under consideration in this matter is not ambiguous. There is no statutory direction that

underwriting profits shall be computed on one basis or another. Our statutes are silent on that subject. The departmental construction has continued only since 1915.

"In any event a departmental construction of a revenue producing statute can never be entirely freed from the very natural inclination on the part of the department to resolve all doubts in favor of that construction which will bring the most revenue to the department, and make the best showing for its activities."

State ex rel. Insurance Company v. Hyde, 292 Mo. 342, l. c. 355.

[fol. 3904] The consideration suggested by the court in the case last above cited are particularly pertinent in this case, in view of the well known fact that for many years there has been considerable contention between the Insurance Department of this state and the insurance companies, and more than a little litigation arising therefrom. Under these circumstances, the departmental construction is not entitled to controlling weight.

VII

Defendant asserts and plaintiffs deny that earnings from investments should be considered in reviewing a rate reduction order. Sections 6283-4 R. S. Mo. are the applicable statutes. Both in the original act and in the amendment of 1923, the salient feature of these sections is the portion relating to a rate reduction order. To insure a reasonable rate for fire insurance is the obvious purpose of the law. Neither section as originally enacted contained any direct reference to investment earnings. As first enacted, Section 6283 provides for a reduction of rates "if it appears that the result of the earnings in this state" shows an unreasonable profit. As amended, Section 6283 directs the Superintendent of Insurance, "in determining the question of rates and profits," to "take into consideration * * * all earnings of such companies, including investment profits," and provides that if "it appears that the rates charged in this state by stock fire insurance companies * * * are producing a profit in excess of what is reasonable" a reduction order may be made.

[fol. 3885] If an unreasonable profit appears the statute both as originally enacted and as amended say that the Superintendent shall order a reduction of rates. Unquestionably the statute means that a rate shall be charged in this state for fire insurance which will produce a fair and reasonable profit, no more and no less. If the existing rates produce an unreasonable profit, without regard to other earnings, the right of the superintendent to order a reduction admits of no doubt. But if the existing rates, considered alone, produce only a reasonable profit, how may a reduction order be justified? Clearly, only by taking other earnings into consideration. This, defendant contends he may do. It is well to look to the consequences of this doctrine. A situation might arise whereby, because of a small volume of fire insurance in this state and growing investment profits here or elsewhere, the volume of investment profits might exceed the volume of fire insurance premiums in this state sufficiently to afford the companies, in the opinion of the superintendent a fair and reasonable profit. In that event fire insurance rates in this state, on defendant's theory, could be wiped out entirely. However improbable that suitation may be, it is logically possible.

There is another consideration. Unquestionably the right to regulate rates arises solely from the fact that the underwriting business is impressed with a public interest. The Supreme Court of the United States and of this state have both so held (Insurance Co. v. Lewis, 233 U. S. 389; [fol. 3886] State ex rel. v. Harty, 278 Mo. l. c. 691). Numerous other cases to the same effect might be cited.

In the German Alliance Insurance Company case, supra, it was said:

"We may venture to observe that the price of insurance is not fixed over the counters of the companies by what Adam Smith calls the higgling of the market, but found in the councils of the underwriters, promulgated in schedules of practically controlling constancy which the applicant for insurance is powerless to oppose and which, therefore, has led to the assertion that the business of insurance is of monopolistic character and that 'it is illusory to speak of a liberty of contract'" (233 U. S. 389, l. c. 416).

These considerations do not apply to the investment end of the plaintiff's business.

Furthermore, it would be entirely feasible for the plaintiff companies annually to distribute all of their profits in the form of dividends to their stockholders. It would be equally feasible for those same stockholders to organize another corporation having the same stockholders, and the same officers, and immediately to turn over to the second corporation for investment the dividends received by them from the underwriting business. In that event, it is difficult to see with what logic it could be argued that the earnings of the investment should be considered in determining the rates to be charged in the fire insurance business. All of these considerations tend to justify plaintiff's [fol. 3907] claim that the profits received on the investment feature of their business are not to be taken into consideration in determining the question of rates. Plaintiffs assert that they have two wholly distinct activities, insurance underwriting and investments. They say that these activities are as easily distinguishable from one another as freight and passenger traffic, or the inter-state and intra-state business of common carriers; and that investment earnings have nothing to do with underwriting rates. Nevertheless we have in the amendment of 1923 the plain statutory command that "in determining the question of rates and profits in accordance with this article, the superintendent of insurance * * * shall also take into consideration * * * all earnings of such companies, including investment profits." If this amendment requires the superintendent to take all earnings and investment profits of the plaintiff companies as one of the factors to be considered by him in reducing a rate—and it is difficult to see how it can otherwise be construed—then the question is squarely presented whether or not that portion of the statute is constitutional.

Upon this point defendant's contention is stated thus: "In considering the earnings of all of the insurance companies doing business in Missouri, as required by the Missouri Rating Act, consideration must be given to their entire activities, and all income from all sources must be considered." Defendant enlarges upon this point, saying that "all of the income which these corporations receive,

whether it be from policyholders, interest on money, rent [fol. 3908] received from property or otherwise must be considered. Thus stated, the superintendent is bound to consider not only all income received by the plaintiff companies within the State of Missouri, but their entire income from whatever source, including invested capital and surplus. Many of the plaintiff companies do a business coextensive with the United States, and some of them, at least, are world-wide in their operations. The capital stock of the corporation represents money which is derived from the stockholders, not the policyholders. The record shows in many instances that the stockholders of various plaintiff companies have contributed large amounts to surplus. In some instances assessments have been levied by the companies upon their stockholders more than sufficient to replace the entire original capital. The money constituting the capital and surplus is a part of the money which is invested by the plaintiffs and from which they receive an income. So far as capital and contributed surplus are concerned, it is not easy to see upon what theory the earnings from those items should be taken into consideration. The United States Supreme Court and the Supreme Court of this state have had frequent occasion to deal with these questions as affecting public utilities, but, apparently, not as touching the business of fire insurance.

In the oft-cited case of Smyth v. Ames, 169 U. S. 466, the validity of a statute of the State of Nebraska which undertook to regulate freight rates was involved. The railroad companies alleged that this act was confiscatory. The con- [fol. 3909] tention was upheld in the trial court, and from the decree so holding the State Board of Transportation, which was one of the defendants, appealed. The opinion of the Supreme Court was delivered by Mr. Justice Harlan, who said in part:

"If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company carried on its inter-state business enough to give it just compensation in respect to its entire line and all its business, interstate and domestic. We cannot concur in this view. In our judgment it must

be held that the reasonableness or unreasonableness of rates prescribed by the state for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control."

The statute was held unconstitutional. In the notable "Minnesota Rate Cases" the same court held in judgment a statute of the State of Minnesota prescribing rates for both freight and passenger service within the State of Minnesota. This statute was challenged on the ground that the rates were confiscatory and therefore the statute was [fol. 3910] unconstitutional. The judgment of the lower court with reference to a single railroad held the rates to be confiscatory, and that judgment was affirmed by the United States Supreme Court. In that case the master found the value of the property used in intra-state transportation, freight and passenger, and upon that value he computed the net return received by the carrier. This property was the property which was devoted to the public service in the State of Minnesota. It was urged in that case as it is urged in the case at bar, that large amounts in stocks and bonds owned by the railroad company should be considered in fixing the rate. In his report the master said: "Assets and property not devoted to public service have not been valued, and as they are a large element in stock valuation it follows that the value of bonds and stocks is wholly unreliable and cannot be used in this case as an element in determining the value of operating property, or as a basis for rate making." The court held that "In this view the master was undoubtedly right."

(Minnesota Rate Case, supra, 230 U. S., 352, l. c. 440.)

Numerous cases involving railroads and other public utilities have arisen under statutes which require the rendition of certain services without compensation, or for an

inadequate compensation, although allowing reasonable compensation for all of the services rendered, when considered as a whole. In such cases it is uniformly held that so much of the statute as requires the rendition of service without reasonable compensation is void. That question [fol. 3911] was involved in the case of Hackworth v. Missouri Southern Railroad Company, 286 Mo. 282. In that case the rate order provided a non-compensatory rate for hauling railroad ties, but it was contended that the order as a whole permitted the railroad company to earn a fair return upon its investment, notwithstanding the loss upon the railroad ties.

Graves, J., speaking for the court en banc, said:

"Public policy should not stand for a law which compels Jones to make good the losses on Smith's freight. * * * It is a wholesome rule for the state in making rates to obviate a rate which will compel the carrying of a commodity at a loss. If the state can do that, it can compel some commodities to be carried free, and give the railroad fair net earnings, by having high rates on other commodities" (l. c. 300).

The order, in so far as the rate for hauling ties was concerned, was held invalid.

In the course of this opinion the court cites numerous decisions of the United States Supreme Court to the same effect, including Northern Pacific Railway Company v. North Dakota, 236 U. S. 585. In the last mentioned case the statute of North Dakota empowered the making of a rate which, as the railroads contended, required the intrastate carriage of coal at a loss. The enforcement of this rate was resisted for the reason that it was contended the railroads could not be compelled to carry any particular article or class of freight at a loss, even though its intra- [fol. 3912] state revenues from all of its business afforded reasonable compensation. The rate was upheld by the state court.

In the United States Supreme Court, Mr. Justice Hughes delivered the opinion of the court, in the North Dakota case, supra, and in the course of the opinion remarked that:

"In such a case it would be no answer to say that the carrier obtains from its entire intrastate business a return

as to the sufficiency of which in the aggregate it is not entitled to complain. * * *

It does not aid the argument to urge that the state may permit the carrier to make good its loss by charges for other transportation. If other rates are exorbitant they may be reduced. Certainly it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action. We cannot reach the conclusion that the rate in question is to be supported upon the ground of public policy, if, upon the facts found, it should be deemed to be less than reasonable."

The foregoing excerpts from the North Dakota case are cited with approval in the Hackworth case, supra, (277 S. W. l. c. 1036).

The cases above cited are supported by many others and are declaratory of the accepted law with reference to the regulation of railroad rates. The situation with respect to the regulation of insurance rates is analogous, though not [fol. 3913] identical. As compared with the property which a railroad company uses in its business an insurance company's property so used is small indeed. Railroad rates are based, in large part, at least, upon the amount of property which the railroad company has devoted to a public use. That, however, is more a convenient method of arriving at a basis of computation than anything else. The authorities uniformly hold that it is the nature of business, not the amount of property actually used in the business, which legally justifies regulation. It is the service rendered which is the fundamental thing. The property used in the business is merely the instrument by which the service is rendered (German Alliance case, supra, l. c. 408). The rate, on whatever basis computed, is but a means of determining the amount of the reward to which those who render that service are entitled. Given a proper amount in dollars and cents it does not matter whether that amount is five per cent of earned premiums or three per cent of written premiums or fifty or any other per cent of capital. To express the amount in terms of percentage proves nothing. If, then, it is the peculiar character of the service rendered which permits or denies the governmental regulation of rates, how far does that right extend? Obviously it covers

the field of that peculiar service, and it covers no more. The service rendered to the public by fire insurance companies is insurance only. The investment feature of fire insurance companies is incidental. The service rendered is in the underwriting field and not elsewhere. Hence it is [fol. 3914] that the regulation of such companies is confined to underwriting rates, not investment rates.

The fact that one part of a business may be the subject of state control does not necessarily carry all of its business under that control. Thus the business of a taxicab company in carrying passengers from public railroad stations to hotels was held subject to rate regulation, but not so as to passenger business conducted at its garage. Terminal Taxicab Company v. Public Utility Com. of Washington, D. C., 241 U. S. 252.

If intrastate railroad earnings may not be reduced below a fairly compensatory rate by taking into consideration even excessive profits reaped in interstate business, and if an intrastate carrier cannot be required to transport certain classes of goods for less than adequate compensation, even though all of its intrastate business yields a fair return on all of its activities, and if a taxicab company cannot be required to transport passengers in its public business at less than reasonable rates, even though it may make an exorbitant profit in its private business, upon what theory can it be said that a reasonable intrastate fire insurance rate may be reduced by taking into consideration extrastate insurance or investment returns or intrastate investment gains? One cannot be compelled to go into the fire insurance business nor into the investment business. There is no necessary relationship between the two. Each can subsist without the other. It is mere business convenience which causes them to be united under one management. Each, when conducted separately, has a right to a fair re- [fol. 3915] turn. What is there in their union under one management which deprives either of that right?

Now the funds which plaintiffs have for investment arise from four well defined sources; to wit: from capital stock, from contributions to surplus, from underwriting receipts, and from investments of these various funds. To appropriate to the reduction of underwriting rates all, or any part, of earnings on invested capital and surplus is to lessen,

and therefore, pro tanto, to regulate investment earnings. Investment rates, except in so far as the ordinary regulations as to usurious interest are concerned, are not subject to regulation on any known theory. Capital and surplus and earnings thereon are therefore excluded from consideration. As to earnings arising from the investment of underwriting earnings it is to be remembered that these underwriting profits or earnings, are the net fruit to the insurance companies of their underwriting activities. Legitimate use of property is one of the invariable incidents of ownership. Profits arising from such use belong to the owner. When, by a process of attrition and diminution, underwriting receipts become underwriting earnings, they pass from the field of underwriting activity, where alone a public interest is involved, and enter the field of private ownership. The sole ground for rate regulation no longer applies, for the investment feature of the business is not impressed with a public interest. "For every rule there is a reason, and when the reason ceases the rule ought to cease." The maxim seems pertinent. Investment earn-[fol. 3916] ings on earned premiums are not, therefore, to be considered in rate making. In so far as the statute provides otherwise, it is unconstitutional.

The question as to whether or not earnings arising from the investment of unearned premiums accruing from insurance in this state should be considered by the superintendent in fixing rates is one not necessary to be decided in this case. This is true because as shown by the tabulated statement above set forth, all such earnings may be allowed as proper for consideration, and all expenses which he claims should be rejected may be so treated, and still the reduction order does not allow plaintiffs a reasonable profit.

Nevertheless, it may not be amiss to say that unearned premiums constitute a large sum. This money is paid in advance by the policyholders and, until it becomes earned premiums, or is refunded because of cancellations, is required to be held by the companies in large part, at least, as a reserve fund. This fund is not available for distribution in the form of dividends, and, in a sense, is held by the insurance companies in trust for the policyholders. It does not belong to the policyholders, it is true, but it is equally true that it has not yet become the absolute prop-

erty of the plaintiffs. It is at all times possible for the policyholders to withdraw the entire fund from the insurance companies, by cancelling their policies. This fund is kept invested by the plaintiffs and a very considerable income is derived therefrom. An actual, or at least, a constructive trust is thus created. Now the general rule is [fol. 3917] that a trustee is entitled to an allowance sufficient to cover reasonable expenses and reasonable compensation for his services, but beyond that, all profits belong to the cestui que trust. No valid reason appears why this rule would not work substantial justice if applied to the earnings upon the investment of unearned premiums in the case at bar. This record is barren as to what allowance should be made to the companies either for expenses or services with respect to this matter, nor is there very satisfactory evidence as to the amount of such earnings. In his reduction order defendant states that plaintiffs' earnings arising from the investment of unearned premiums derived from their business in this state amount to $2,418,596.00. This entire amount has been included in the tabulation hereinbefore set forth and charged to plaintiffs as profits. Even on this basis, the profit derived by plaintiffs in this state during the test period, as shown by that tabulation, is inadequate. Further tribulation about this item is therefore unnecessary. What has been said disposes of the entire matter of investment earnings so far as they are a live issue in this case.

If the foregoing conclusions are correct the reduction order as written can not be upheld. Must it be rejected as a whole, or may the court modify it and uphold it in part and vacate it in part?

VIII

By the amendment to Sec. 6283, supra, it is provided, among other things, that: "The court shall have authority to sustain, set aside or modify the orders and directions [fol. 3918] under review." The court already had the power, inherently, under our constitution, to sustain or set aside the order. The grant of power to modify the order is new. If this provision as to modification is valid, it becomes the duty of the court to scan the record in this cause and modify the order under review, if the facts justify a

modification. The constitutionality of this provision has not been questioned by the parties, but it goes to the jurisdiction of the court, and must, therefore, be decided either directly or by implication. Is the statutory provision last above quoted valid in so far as it attempts to confer upon the courts power to modify a rate making order? If not, then the court has jurisdiction only to sustain the order as a whole or reject it as a whole. The question does not seem to admit of any reasonable doubt. Rate making is a legislative function pure and simple (German Am. Ins. Co. v. Lewis, 233 U. S. 389; State, ex rel. Waterworth v. Harty, 278 Mo.). By a plain provision of our constitution this purely legislative power can not be conferred upon the judiciary. Article 3 of the constitution reads as follows:

"The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted."

[fol. 3919] In modifying the order, the court would obviously increase or decrease the rate fixed by the order. Any other modification would necessarily be trivial. That would be, in effect, and in fact, to make an order vitally different from that made by the superintendent. It would be a purely legislative act. Courts do not legislate. Under our constitution, the legislature can not empower them to do so.

In State, ex rel. Waterworth, supra, the Supreme Court en banc decided this precise question saying:

"It is clear from the principles announced in the authorities cited that the courts of this state, under our constitution are prohibited from participating in the process of establishing a system or schedule of rates for application to future charges in a business subject to such regulation. Such duties are legislative in character and cannot be conferred upon or usurped by the courts."

The Legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates. "Chicago & G. T. Ry. Co. v. Wellman, 143 U. S. loc. cit. 344, 12 Sup. Ct. loc. cit. 402, 36 L. Ed. 176; Express Cases, 117 U. S. loc. cit. 28, 29, 6 Sup. Ct. 542, 628, 29 L. Ed. 791; Traverse City v. Comm., 202 Mich. 575, 168 N. W. loc. cit. 483; City v. Madison G. & E. Co., 529, 116 Am. St. Rep. 944, 9 Ann. Cas. 819."

129 Wis. 249, 108 N. W. 65, 8 L. R. A. (N. S.).

[fol. 3920] So much of the amendment of 1923, therefore, as attempts to vest in the court power to modify the order in question is unconstitutional and void. The order must stand as a whole or fall as a whole.

IX

Defendant contends that taxes paid on property not devoted to the insurance business can not be allowed as expenses. As an abstract legal proposition this is doubtless correct. But, as has been shown, if all taxes are eliminated from the calculations involved in this case, the reduction order is nevertheless confiscatory and therefore void. Furthermore, the evidence shows that all such taxes have been eliminated in plaintiffs' computations.

Defendant makes a like contention concerning donations on the part of plaintiffs. The record does not show that any donations are charged in plaintiffs' claimed expenses in this case. That fact disposes of this contention.

Defendant argues that only earnings on regulated business, meaning thereby fire, lightning, hail and wind storm insurance, can be considered in this case.

The question is not one of importance. Both parties submitted tables and calculations on all classes of business. The volume of non-regulated business here involved is relatively small and, in view of the conclusions already announced, the result would be the same whether the non-regulated business were included or excluded from the calculations. It is, therefore, not thought necessary to separate the two classes, even if defendant's construction of the [fol. 3921] statute should be accepted. However, a correct construction of the statute seems to be that earnings on all

classes of insurance in which stock fire insurance companies engage should be taken into consideration. As originally enacted the statute provides for the ascertainment of "the earnings in this state," "aggregate profit" and "aggregate collections." These expressions are inclusive. In the amendment the Superintendent is expressly ordered to take "all earnings" into consideration. Irrespective of the statute it would seem certainly to be proper, and perhaps necessary, for the Superintendent to take all underwriting earnings into consideration in ascertaining a proper underwriting rate.

X

The statute relating to rate-making (Sec. 6283, supra) provides, among other things, that the Superintendent in making rates "shall give proper and reasonable consideration to the conflagration liability both within and without the state." Plaintiffs contend that defendant failed to obey the statutory command. A conflagration, in the insurance world, is any loss in excess of one million dollars. In such cases it is customary to charge the first million dollars of the loss against the state in which the loss occurs, and then to pro rate the remainder among all of the states, including the state wherein the loss occurred, in the ratio of the premium income from each state. If the conclusions above set forth are correct this question is of academic interest, for the order must be set aside for other reasons. The law [fol. 3922] presumes that the defendant did give to the conflagration hazard the consideration required by the statute, for it was his duty to do so. Plaintiffs assert that they are lawfully entitled to a fair allowance for the conflagration hazard—shown by much evidence to be three per cent of the earned premiums—and an allowance for a reasonable profit, but that the reduction order allows them neither. Undoubtedly the statute means that the conflagration hazard shall be considered, but it does not require that in a rate-making order a fixed percentage shall be named in the order as an allowance, on account of that hazard. The order itself recites that it was made "after giving proper and reasonable consideration to the conflagration liability both within and without the state." The Superintendent is not required by law to draw a correct conclusion from his con-

sideration of this hazard. The order recites that he considered it, and it is but fair to conclude that he did so.

XI

Plaintiffs assert that the amendment of Sec. 6283 enacted in 1923 is retro-active and therefore void in so far as this case is concerned. The pertinent feature of that amendment is the provision that:

"In determining the question of rates and profits" the superintendent "shall also take into consideration the acquisition cost and administration expense of such companies, and all earnings of such companies, including investment profits. He shall also consider whether or not the [fol. 3923] underwriting activities of such companies are conducted on a reasonably economical basis, and whether or not their investments have been and are being made in a safe and reasonable manner." Session Laws 1923 p. 234.

At most, what is this but a mere rule of evidence? It directs the superintendent to consider certain things in making a rate order. True, those things are in the past, but the whole test period, for that matter, is in the past. The order which may result from that consideration, however, in no manner affects the past. It looks exclusively to the future. Under the original act, the superintendent is authorized "to investigate the necessity for a reduction of rates, and, if upon such investigation it appears" that a reduction order is justified, he is empowered to make it. There was no limitation upon his investigation. He could easily have investigated earnings and investments before the amendment as after. Either before or after the amendment the investigation merely discloses facts, or supposed facts; evidence, in other words. The amendment did not disturb any vested right which plaintiffs had theretofore, for all of the things which may be considered under the amendment were subject to consideration before the amendment was passed. The amendment creates no new cause of action, affords no new remedy, even, but merely orders that to be considered which was already open for consideration. The amended act does not purport to make the facts relative to such earnings and investments competent evidence

[fol. 3924] in any court proceeding. But if it did, it would still be merely a rule of evidence, and not objectionable on the grounds here urged. The constitutional provision in regard to retrospective legislation is "that no * * * law * * * retrospective in its operation * * * can be passed by the General Assembly." (Art. 2, Sec. 15, Mo. Const.) This section has frequently been construed by our courts. The uniform construction has been construed by our courts. The uniform construction has been that a statute is not within the prohibition of the constitution unless it destroys an existing vested civil right, imposes a new daty, creates a new obligation, or attaches a new disability concerning past transactions. (Gladney v. Sydnor, 172 Mo. 318; Hope Insurance Co. v. Flynn, 38 Mo. 483; Clark v. Railroad, 219 Mo. 524.) It is not perceived how the statute in question can be so construed as to fall within any of the classes above mentioned.

XII

In 1920 the Insurance Department of this state granted an application for an increase of fifteen per cent on fire insurance rates on the base of earned premiums. Defendant contends that the full amount of that increase shall be charged as earnings against the plaintiffs in this proceeding. The increased rate, of course, did not affect policies then outstanding. It could only be applied to new business and renewals. The test period here involved was the five years of 1917 to 1921, both inclusive. Defendant calculates that the benefit actually received by plaintiffs during the [fol. 3925] test period amounted to $1,084,444.00, and that the benefit to be derived therefrom after the expiration of the test period amounts to $7,693,045.00. Whatever benefit actually was received during the test period is reflected in the earnings of the plaintiffs during that period and is included in the calculations shown in this case. As to the remainder, it is difficult to see how it can be considered. Under the plain letter of the statute the thing to be considered here is "the result of the earnings in this state of the stock fire insurance companies for five years next preceding" the investigation to be made by the superintendent preliminary to the making of a rate order. To ac-

cept defendant's theory would be to take into consideration not only the five years next preceding the investigation, but also such time after the expiration of the test period as might be necessary in order to enable the increased rate to become fully effective. Courts cannot amend statutes. The test period fixed by the General Assembly is five specified years. No more can be considered and no less. Defendant's theory cannot prevail.

XIII

The evidence in this case discloses that plaintiffs have deducted from the expenses which they claim should be allowed to them, a certain percentage, (one-half of one per cent), for the expenses of the investment feature of their business. This sum is in addition to all expenses which obviously are investment expenses, and is intended to cover items of expense incurred for the benefit both of the insur- [fol. 3926] ance and investment business, and which cannot be separated. The weight of the testimony is that the amount so deducted is reasonable. Defendant's claim that plaintiffs have charged investment expense without including investment profits is not supported by the evidence.

XIV

The foregoing may be summarized into the following findings of fact and conclusions of law:

1. The experience of the plaintiffs during the five years, 1917 to 1921, both inclusive, as shown by the evidence in this case, resulted in a loss in their underwriting business of $7,010,200.00.

2. The reduction order here under review, had it been in force during that period, would have imposed upon plaintiffs an additional loss of $7,134,751.00.

3. Even if the expenses claimed by plaintiffs in the matters of apportioned head office expenses, taxes, alleged excess commissions and certain miscellaneous expenses above tabulated, be denied, and even if the earnings on the investment of unearned premiums arising from their underwriting business in this state, be charged against them as profits, the profit remaining is not a reasonable profit.

4. Profits arising from the investment of capital, surplus and earned premiums cannot be taken into consideration in fixing underwriting rates.

5. The statutes above mentioned, in so far as they authorize the consideration of profits arising from the investment of capital, surplus and earned premiums, in fixing [fol. 3927] underwriting rates, are in violation of the Fourteenth Amendment of the Constitution of the United States and of Section 30, Article II of the Constitution of Missouri and are void.

6. Section 6284, Laws of Missouri, 1923, in so far as it attempts to confer upon courts the power to modify a rate reduction order made by the Superintendent of Insurance of Missouri, by modifying such order by either increasing or reducing the rate fixed in such order is in violation of the Constitution of this state and is void.

7. That rate reduction order above quoted made by the Superintendent of Insurance of Missouri on the 9th day of October, 1922, is unreasonable, confiscatory, and void and should be set aside.

8. All other findings of fact and conclusions of law above set forth preceding this concluding summary, are adopted as a part of this summary.

It is perhaps unnecessary to say that the findings of fact herein set forth are based upon the evidence in this case, and the conclusions of law herein announced arise primarily from an attempt to apply the pertinent provisions of the statutes of this state to those facts. Resort has been had to general principles of law and to adjudicated cases in the absence of statutory direction. Except perhaps in a single instance, the questions decided are such only as are raised in the briefs of counsel. Various interesting questions, ably discussed in the briefs have not been specifically decided herein. It is believed that the questions which have [fol. 3928] been decided are decisive in this case and that the conclusions herein announced would not be changed, by a decision of any question not specifically passed upon.

Respectfully submitted, John I. Williamson, Referee.

[File endorsement omitted.]

And thereafter, and on the same day, said referee filed his supplemental report showing the time spent, services rendered and expenses incurred by him as referee herein, which supplemental report is in words and figures, as follows:

[fol. 3929] In the Circuit Court of Cole County, Missouri

[Title omitted]

Supplemental Report of Referee—Filed December 22, 1924

To Honorable Henry J. Westhues, Judge of the Court aforesaid:

The undersigned referee respectfully submits this his supplemental report in the above entitled cause, embodying herein certain matters which, as the referee believes, more properly appear in this form than as a part of the report of the findings of fact and conclusions of law which are set forth in separate document.

1. The referee files herewith, and adopts as a part hereof, a copy of the order of this court made in this cause on January 15, 1923, appointing the undersigned as referee in this cause, and states that on said date, in open court, he duly qualified as such referee.

The referee also files herewith, as a part hereof, a copy of the order of this court made on the 11th day of April, 1923, in this cause, appointing the undersigned as referee, and states that on said date in open court he duly qualified as referee in this cause, and states that on each of the occasions above mentioned he took the oath prescribed by the statutes in such cases made and provided, and a copy of said oath is herewith filed as a part hereof.

2. Referee further states that pursuant to said appoint- [fol. 3930] ment, he did on the 16th of January, 1923, give notice to the parties, plaintiffs and defendant, in said cause through their attorneys of record that he would, on Saturday, the 27th day of January, 1923, at the hour of 10 o'clock, a. m., on said date, at the office of the referee, No. 818 Scarritt Building, Kansas City, Jackson County, Missouri, proceed to hear any evidence on behalf of either party with

respect to the issues involved in this case, but the referee states that on the said 27th day of January, 1923, by agreement of parties, the hearing of evidence was deferred; that thereafter, towit, on the 9th day of May, 1923, the referee gave notice to the parties by their counsel that he would, on the 4th day of June, 1923, at the hour of 10 o'clock, a. m., in the office of Messrs. Bates, Hicks & Folonie, No. 39 So. LaSalle Street, Chicago, Illinois, hear evidence on behalf of either party, pursuant to the order of reference aforesaid touching the issues involved in this cause, and would continue this hearing from time to time until the conclusion of the introduction of evidence. A copy of said notice is filed herewith as a part hereof.

Referee states that at the time and place aforesaid the parties, both plaintiffs and defendant, appeared and by agreement of parties the hearing of the cause was adjourned from the place above designated to the Auditorium room, 21st floor, Insurance Exchange Building, Chicago, Illinois, for the convenience of all parties, and at said last named place the parties proceeded to offer evidence; that adjournments were had from time to time by consent of parties and order of referee, and evidence was heard in Chicago at the [fol. 3931] place last aforesaid on June 4, 5, 6, 7, 18, 19, 20 and 21, and July 9, 10 and 11, 1923; that on the date last aforesaid the further hearing of evidence was adjourned to the office of the referee, and to the date of September 21, 1923, at which time further evidence was offered and adjournment was had to Room 932, Law Institute, Equitable Building, No 120 Broadway, in the City of New York, beginning on October 11, 1923, and continuing at the same place during October 15, 16, 17, 18 and 19, 1923, upon which last named date the further hearing of the cause was adjourned to Hartford, Connecticut, for October 23, 1923, at which time and place the parties appeared and further proceedings were had in said cause, and the further hearing of the cause was then adjourned to the same place above mentioned, in the City of New York, where evidence was heard on October 24 and 25, 1923, upon which last named date the further hearing of the evidence was adjourned to Kansas City, Missouri, at The Kansas City Club, at which place evidence was heard on November 19 and 20, 1923, and continued to December 19 at the same place, at which

time evidence was heard on December 19 and 20, 1923, and the hearing was continued to the same place to January 17, 1924, and on January 17 and 18, 1924, the hearing was continued and then adjourned to the same place to May 5, 1924, at which time and place the hearing was resumed and continued during May 5, 6, 7, 8 and 9, 1924, and then adjourned to the same place and to the date of May 27, 1924, at which time further proceedings were had in said cause, and the [fol. 3932] hearing again adjourned to the same place and to the date of June 16, at which time further proceedings were had during June 16 and 17, 1924, at which time both parties having announced that they had offered all evidence which they desired to offer, the cause was set down for oral argument at the Court Room of the Kansas City Court of Apeals, in the Jackson County Court House, at Kansas City, for September 5, 1924, and that said cause was argued by the parties by counsel at said time and place during the days of September 5, and 6, 1924, and by the referee taken under advisement; that in the progress of the hearings aforesaid twenty-nine (29) witness were examined. The testimony of said witnesses is contained in eight volumes, comprising 5,703 pages; that the oral arguments of counsel are contained in one volume of 275 pages; that one large volume of exhibits and of printed record offered in evidence are all returned herewith as parts hereof, together with the printed briefs of counsel on both sides, aggregating 732 pages.

3. The referee further states that from the 6th day of September, 1924, until the 20th day of December, 1924, he has had said cause under advisement, and has been engaged in preparing his findings of fact and conclusions of law thereon, and during said time has devoted approximately sixty days to actual labor in said cause; that he has expended for traveling expenses, rent of the Kansas City Court of Appeals Court Room, printing his report, and other necessary and reasonable expenses, the sum of $617.24; that he has heretofore been allowed by order of court as part compensation for services rendered to the [fol. 3933] date of said order, the sum of $3,000, one-half of which was paid by plaintiffs and one-half by defendant, and that plaintiffs and defendant voluntarily have paid to the

referee the further sum of $1,000 each, making a total received by the referee of $5,000.

Respectfully submitted, John I. Williamson, Referee.

[File endorsement omitted.]

[fol. 3934] And thereafter, and on the same day, December 22, 1924, plaintiffs filed their exceptions to portions of Section XI of the referee's report; and the court, being fully advised in the premises, overruled plaintiffs' said exceptions, to which ruling plaintiffs then and there at the time excepted and still except. Said exception are in words and figures as follows:

[fol. 3935] IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

[Title omitted]

PLAINTIFFS' EXCEPTIONS TO SECTION XI OF THE REFEREE'S REPORT—Filed December 22, 1924

Now come the plaintiffs and respectfully except to the following portions of Section XI of the Honorable Referee's report filed herein, in the following respects and for the following reasons, to-wit:

1. Plaintiffs except to the statement in Section XI of said report, to the effect that "plaintiffs assert that the amendment of Section 6283 enacted in 1923, is retroactive and therefore void, insofar as this case is concerned," because said statement is not an accurate statement of plaintiffs' contention with respect to said amendment of 1923 (Laws of 1923, p. 234)—plaintiffs' contention being that said Act of 1923, has no application to any issue involved herein, because the rate reduction order was made and this suit was filed and the issues made up herein, all prior to the time that said Act of 1923 became effective, and that to so construe said Act of 1923, as to make it applicable to this case would be to render it retrospective in operation, in violation of Section 15 of Article II of the Constitution of Missouri.

2. Plaintiffs except to the referee's finding that said Act of 1923 merely prescribes a rule of evidence, and to the finding that said amendment of 1923, did not disturb any vested right which plaintiffs had before said Act of 1923, [fol. 3936] became effective, and to the finding that said Act of 1923, does not purport to create a new cause of action, or to afford a new remedy, or to impose a new duty, or to create a new obligation, or to attach a new disability concerning past transactions; said exceptions being based upon the following reasons:

(a) Because said Act of 1923 is not limited to mere matter of remedy or procedure, or to the prescribing of a mere rule of evidence.

(b) Because said Act of 1923 purports to affect the substantive rights of the stock fire insurance companies and of the Superintendent of the Insurance Department, in respect to the reduction of rates.

(c) Because said Act of 1923 provides that the superintendent shall take into consideration "the acquisition costs and administration expense of such companies, and all earnings of such companies, including investment profits," and further provides that he shall consider "whether or not the underwriting activities of such companies are conducted on a reasonably economical basis and whether or not their investments have been and are being made in a safe and reasonable manner"; and because these provisions of said act are not confined to the remedy, or to mere matters of procedure, but go to the very vitals of the substantive law relating to the making of reduction orders, and affect the vested rights of the stock fire insurance companies in relation thereto, and purport to impose new duties upon said companies, and to create new obligations and to impose the [fol. 3937] same upon said companies, and to attach new disabilities to said companies concerning past transactions.

(d) Because to so construe said Act of 1923, as the report of the Honorable Referee construes it, would be to make said act retrospective in operation, and to render the same in violation of Section 15 of Article II of the Constitution of Missouri.

(e) Because on its face said Act of 1923 applies only to rate reduction proceedings that might be begun after said act became effective.

(f) Because said act on its face expressly confines its application to investigations made by the superintendent after the taking effect of said act.

(g) Because said Act of 1923 should not be given a retrospective operation unless that intention is so clearly and positively expressed in the act that no other reasonable construction can be given to it.

(h) Because to construe said Act of 1923 as the report of the Honorable Referee construes it is to cut off rights to which the plaintiffs were entitled under the Act of 1915, Section 6283, R. S. 1919, and to subject the plaintiffs to new liabilities and disabilities, and to require plaintiffs to perform certain obligations which they were not required to perform under the former law.

Wherefore, for all the foregoing reasons, the plaintiffs respectfully except to the foregoing portions of Section XI of the Honorable Referee's report filed herein and respectfully pray the court to set aside said portions of said Section XI of said report, and to find and hold that said [fol. 3938] Act of 1923 has no application to the superintendent's rate reduction order of October 9, 1922, or to the review proceedings now pending herein.

Bates, Hicks & Folonie, Leahy, Saunders & Walther, Cockrill & Armistead, Hogsett & Boyle, Attorneys for Plaintiffs.

And upon the back of said plaintiffs' exceptions to Section XI of the referee's report, appears the following endorsement, to-wit: No. 4566. In the Circuit Court of Cole County, Missouri, November Term, 1924. Aetna Insurance Company, et al., Plaintiffs vs. Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, Defendant. Plaintiffs' exceptions to Section XI of the referee's report. Filed, December 22, 1924. Richard Nacy, Clerk.

And thereafter, and on the same day, December 22, 1924, defendant filed exceptions to the referee's report, and the court being fully advised in the premises overruled the defendant's exceptions, to which ruling defendant at the time excepted and still excepts. Such exceptions are in words and figures, as follows:

[fol. 3939] IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI, NOVEMBER TERM, 1924

No. 4566

AETNA INSURANCE COMPANY et al., Plaintiffs,

vs.

BEN C. HYDE, Superintendent of the Insurance Department of the State of Missouri, Defendant

EXCEPTIONS OF BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, DEFENDANT, TO THE REPORT OF JOHN I. WILLIAMSON, REFEREE HEREIN

Now, at this date, comes the defendant, Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, through his undersigned attorneys, and makes and presents these his exceptions to the report of the said John I. Williamson, referee, filed herein on the 22nd day of December, 1924.

I

Defendant excepts to the following portion of said referee's report, on page 8 thereof namely:

"Only that part of head office expenses which is apportioned to Missouri, is involved in this case. Unless plaintiffs are permitted to charge as expenses that part of head office expenses so apportioned to this state, then the question as to the amount of the salaries here involved is eliminated from consideration."

on the following grounds:

1. That such statement ignores the law placing the burden of proof on plaintiffs.

[fol. 3940] 2. That such finding relieves plaintiffs of the burden imposed upon them by the Statutes of Missouri, and is not supported by the law of Missouri.

II

Defendant excepts to the following portion of said referee's report, on page 11 thereof, namely:

"The last item ($2,418,596) is taken from the reduction order, though not supported by the evidence."

on the following ground:

1. That said statement is supported by the record as evidence was offered proving this amount.

III

Defendant excepts to the following portion of said referee's report, on page 12 thereof, namely:

"If all that defendant claims, as to the specific items above mentioned, be allowed plaintiffs would have made a net profit during the test period of $511,994.00. This sum is less than seven-tenths of one per cent on the earned premium basis, and, it is plain, could not be held to be a reasonable profit."

on the following ground:

1. That such finding is not supported by the evidence and is not a proper statement of the real profits made by plaintiffs during this period.

[fol. 3941] IV

Defendant excepts to the following portion of said referee's report, on page 17 thereof, namely:

"Having thus itemized their expenses to the extent shown, plaintiffs then proved the ratio of these expenses separately and collectively and introduced numerous witnesses experienced in the business of fire insurance who testified that

the ratio of expense to the volume of business was reasonable."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence; (e) is based upon no evidence.

V

Defendant excepts to the following portion of said referee's report, on page 18 thereof, namely:

"If such a showing is made, with the degree of minuteness employed in this instance, and if the defendant desires to question any particular item of expense claimed, it would seem but fair that, at least, he should make that fact known during the hearing of the evidence, and call for additional information with respect to the particular items challenged."

[fol. 3942] on the following ground:

1. That the burden of proof was on plaintiffs in this case and the defendant was not required to call for any evidence, and this record shows repeatedly that defendant notified plaintiffs time and time again that he was insisting that they assume the burden of proof and offer conclusive and convincing evidence as to the unreasonableness of the reduction order, if any they had.

VI

Defendant excepts to the following portion of said referee's report, on page 19 thereof, namely:

"For these reasons, it seems proper to hold that the plaintiffs have performed their duty when they make out a prima facie case as to expenses incurred, and in the absence of a specific attack by defendant upon such expenses as are shown, it will be assumed that the expense shown by the evidence was incurred in good faith, and was reasonable

in amount and proper in character, nothing to the contrary appearing in the evidence."

on the following grounds:

1. That the burden of proof was on plaintiffs in this case and any failure on the part of defendant to attack any such expense was not justification for plaintiff's failure to offer evidence sustaining same.

2. The law never assumes that the expenses in a rate reduction case are reasonable, but the burden of proof in this case was upon plaintiffs and remained there during the entire trial.

[fol. 3943]

VII

Defendant excepts to the following portion of said referee's report, on page 19 thereof, namely:

"Defendant's contentions as to the amounts specifically challenged, as above set forth, are overruled as immaterial for the reasons set forth in discussing them, and his general attack on all expenses claimed by plaintiffs is overruled upon the theory that, as to all matters not covered by defendant's objections to specific items and amounts, plaintiffs have made out a prima facie case."

on the following ground:

1. Because the burden of proof was on plaintiffs in this case and defendant was not compelled to make any specific objection as to any amount, but was objecting as to all amounts and insisting that plaintiffs meet the burden of proof as required by the Missouri statutes.

VIII

Defendant excepts to the following portion of said referee's report, on page 21 thereof, namely:

"This fund is not available for distribution as profits in the form of dividends or otherwise."

on the following ground:

1. That the evidence is without contradiction in this case that such fund was used for the purpose of paying dividends, and for all other expenses of plaintiffs.

[fol. 3944] IX

Defendant excepts to that portion of the referee's report beginning on page 21 with the line, "For these reasons, plaintiffs contend that," and ending on page 22 thereof with the words, "Defendant's contention on this point should be overruled," on the following ground:

1. That such finding erroneously allows consideration to be given only to earned premiums as distinguished from premiums received, and such finding is in violation of the Missouri Rating Act and is not supported by the greater weight of the evidence in this case and is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence; (e) and is based upon no evidence.

X

Defendant excepts to the following portion of said referee's report, on page 22 thereof, namely:

"It appears that the estimated loss frequently varies from the actual loss, sometimes being larger and sometimes being smaller, but during a period of years, the difference between estimated and actual losses is but slight—not sufficient in any event to influence materially the question of rates in any way."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; [fol. 3945] (d) against both the law and the evidence; (e) and is based upon no evidence.

XI

Defendant excepts to the following portion of said referee's report, on page 23 thereof, namely:

"It follows that the incurred basis is correct."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law;

(d) against both the law and the evidence; (e) and is based upon no evidence.

XII

Defendant excepts to the following portion of said referee's report, on page 23 thereof, namely:

"The earned premiums of all of the plaintiff companies in the State of Missouri, during the five-year period in question amounted to $74,813,816.00. The incurred losses amounted to $48,593,664.00, and the incurred expenses amounted to $33,230,352.00 after deducting investment expenses. This makes a total of incurred losses and expenses of $81,824,016.00, and shows a loss to the plaintiff companies for the five-year period in question of $70,010,200.00."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) [fol. 3946] against both the law and the evidence; (e) and is based upon no evidence.

XIII

Defendant excepts to the following portion of said referee's report, on page 24 thereof, namely:

"This method of calculation is also recognized by the insurance department of this state to the extent that it requires an annual report of the plaintiff companies, which report is required, among other things, to set forth a statement of their underwriting experience upon the earned and incurred basis."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (b) against both the law and the evidence; (e) is based upon no evidence; (f) confuses what is known as the "annual financial report" with the Missouri underwriting report, which underwriting report requires the plaintiffs to report to Missouri on the basis of premiums received, losses paid and expenses paid.

XIV

Defendant excepts to the following portion of said referee's report, on page 24 thereof, namely:

"The great weight of the evidence sustains plaintiffs' contention that the method of calculating profits above indicated is practically universal in the fire insurance business."

[fol. 3947] on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XV

Defendant excepts to the following portion of said referee's report, on page 29 thereof, namely:

"There is no substantial dispute as to the amounts expended by plaintiffs on losses."

on the following ground:

1. That defendant made no admission as to any payments claimed to have been made by plaintiffs, but insisted that the burden of proof was on plaintiffs to show by conclusive and satisfactory evidence that such losses were so paid, and there is no substantial evidence in the record showing that such losses were paid.

XVI

Defendant excepts to the following portion of said referee's report, on page 29 thereof, namely:

"For reasons heretofore stated, it seems plain that the calculation to ascertain the amount of profits or losses should be made on the basis of earned premiums and incurred losses and expenses."

[fol. 3948] on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XVII

Defendant excepts to the following portion of said referee's report, on page 31, thereof, namely:

"In the pending cause, in order to obtain an entirely accurate result a calculation would have to be made on every outstanding policy of every one of the one hundred and sixty companies which are plaintiffs in this suit, as of the last day of the test period. This is impracticable."

on the following grounds:

1. That the burden of proof was upon plaintiffs in this case to show by conclusive and satisfactory evidence that the reduction order was confiscatory and it would not have been impracticable for plaintiff to have assumed such burden and to have offered such evidence.

XVIII

Defendant excepts to that portion of the referee's report beginning on page 32 with the line, "The testimony of numerous witnesses on behalf of," and ending on page 33 with the words, "but no practical known method does satisfy," on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

[fol. 3949]

XIX

Defendant excepts to that portion of the referee's report beginning on page 35 with the line, "The considerations suggested by the court in the case," and ending on the same page thereof with the line "not entitled to controlling weight," on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XX

Defendant excepts to the following portion of said referee's report, on page 34 thereof, namely:

"The statute under consideration in this matter is not ambiguous. There is no statutory direction that underwriting profits shall be computed on one basis or another. Our statutes are silent on that subject."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XXI

Defendant excepts to the following portion of said referee's report, on page 35 thereof, namely:

"Under these circumstances, the departmental construction is not entitled to controlling weight."

on the following ground:

[fol. 3950] 1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XXII

Defendant excepts to the following portion of said referee's report, on page 36 thereof, namely:

"Unquestionably the right to regulate rates arises solely from the fact that the underwriting business is impressed with a public interest."

on the following ground:

1. That under the authorities cited it is the insurance business which is affected with a public interest and not the underwriting business of fire insurance companies.

XXIII

Defendant excepts to the following portion of said referee's report, on page 39 thereof, namely:

"The record shows in many instances that the stockholders of various plaintiff companies have contributed

large amounts to surplus. In some instances assessments have been levied by the companies upon their stockholders more than sufficient to replace the entire original capital."

on the following ground:

1. That such finding selects isolated portions of the evidence and gives them undue prominence and ignores a great [fol. 3951] amount of evidence showing enormous dividends received by the stockholders of these fire insurance companies and enormous sums contributed to surplus; namely, seventeen per cent distributed to the stockholders during this five-year period by way of cash dividends and more than thirty per cent paid to the stockholders by way of accumulated surplus.

XXIV

Defendant excepts to the following portion of said referee's report, on page 43 thereof, namely:

"Railroad rates are based, in large part, at least, upon the amount of property which the railroad company has devoted to a public use. That, however, is more convenient method of arriving at a basis of computation than anything else."

on the following ground:

1. That said finding is contrary to all of the adjudicated rates cases in America wherein it is universally held that a railroad corporation is only entitled to receive a reasonable return upon the property devoted to the use of the public.

XXV

Defendant excepts to the following portion of said referee's report, on page 44 thereof, namely:

"The service rendered to the public by fire insurance companies is insurance only. The investment feature of fire insurance companies is incidental. The service ren- [fol. 3952] dered is in the underwriting field and not else-

where. Hence it is that the regulation of such companies is confined to underwriting rates, not investment rates."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law (d) against both the law and the evidence.

XXVI

Defendant excepts to the following portion of said referee's report, on page 46 thereof, namely:

"Investment earnings on earned premiums are not, therefore, to be considered in rate making. In so far as the statute provides otherwise, it is unconstitutional."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law (d) against both the law and the evidence.

XXVII

Defendant excepts to the following portion of said referee's report, on page 47 thereof, namely:

"This fund is not available for distribution in the form of dividends, and, in a sense, is held by the insurance companies in trust for the policyholders. It does not belong to the policyholders, it is true, but it is equally true that [fol. 3953] it has not yet become the absolute property of the plaintiffs. It is at all times possible for the policyholders to withdraw the entire fund from the insurance companies, by cancelling their policies."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law (d) against both the law and the evidence.

XXVIII

Defendant excepts to the following portion of said referee's report, on page 50 thereof, namely:

"So much of the amendment of 1923, therefore, as attempts to vest in the court power to modify the order in question is unconstitutional and void. The order must stand as a whole or fall as a whole."

on the following ground:

1. That said finding is against the law.

XXIX

Defendant excepts to the following portion of said referee's report, on page 50 thereof, namely:

"But, as has been shown, if all taxes are eliminated from the calculations involved in this case, the reduction order is nevertheless confiscatory and therefore void. Furthermore, the evidence shows that all such taxes have been eliminated in plaintiffs' computations."

[fol. 3954] on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XXX

Defendant excepts to the following portion of said referee's report, on page 51 thereof, namely:

"Defendant makes a like contention concerning donations on the part of plaintiffs. The record does not show that any donations are charged in plaintiffs' claimed expenses in this case. That fact disposes of this contention."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence.

XXXI

Defendant excepts to the following portion of said referee's report, on page 51 thereof, namely:

"Irrespective of the statute it would seem certainly to be proper, and perhaps necessary, for the superintendent

to take all underwriting earnings into consideration in ascertaining a proper underwriting rate."

on the following ground:

1. That said finding is against the law.

[fol. 3955] XXXII

Defendant excepts to that portion of the referee's report beginning on page 55 with the line, "In 1920 the Insurance Department of this state," and ending on page 56 with the words, "Defendant's theory can not prevail," on the following ground:

1. That the finding of the referee in refusing to give consideration to the increase granted of fifteen per cent to plaintiffs in January, 1920, is contrary to the law and the evidence, and without a proper consideration being given to the effect of such increase granted, no accurate rate can be figured for the future. This reduction order of ten per cent was against the existing rates and not against the rates which were in effect prior to the reduction order, and the finding of the referee in this case is a finding that this ten per cent reduction was against the rates in existence prior to January, 1920, and not against the existing rates.

XXXIII

Defendant excepts to that portion of the referee's report beginning on page 56 with the line, "The evidence in this case discloses that plaintiffs," and ending on page 56 thereof with the words, "is not supported by the evidence," on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence; (e) and is based upon no evidence.

[fol. 3956] XXXIV

Defendant excepts to the following portion of said referee's report, on page 56 thereof, namely:

"The experience of the plaintiffs during the five years, 1917 to 1921, both inclusive, as shown by the evidence in

this case, resulted in a loss in their underwriting business of $7,010,200.00."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XXXV

Defendant excepts to the failure of the referee to make a finding regarding the alleged excess commissions in St. Louis amounting to $2,496,715.00, because without such finding it is impossible to correctly show the experience of the plaintiffs in this state.

XXXVI

Defendant excepts to the failure of the referee to make a finding regarding the Federal taxes amounting to $1,500,000.00, because without such finding it is impossible to correctly show the experience of the plaintiffs in this state.

XXXVII

Defendant excepts to the failure of the referee to make a finding regarding the apportioned head office. Federal income taxes and miscellaneous expenses amounting to [fol. 3957] $6,938,489.00, because without such finding it is impossible to correctly show the experience of the plaintiffs in this state.

XXXVIII

Defendant excepts to the failure of the referee to make a finding regarding the interest earnings on unearned premium reserves in Missouri amounting to $2,418,596.00, because without such finding it is impossible to correctly show the experience of the plaintiffs in this state.

XXXIX

Defendant excepts to the failure of the referee to make a finding regarding all other taxes paid in Missouri amounting to $2,174,959.00, because without such finding it is impossible to correctly show the experience of the plaintiffs in this state.

XL

Defendant excepts to the failure of the referee to decide all questions raised by defendant in this case and which were material.

XLI

Defendant excepts to that portion of the referee's report on page 56 thereof, to the effect that the plaintiffs lost $7,010,200.00 during the five-year period in question because the evidence conclusively shows, according to the reports as filed by the plaintiffs, that they made $5,000,000.00 in Missouri during that period, and also that the stock-[fol. 3958] holders of plaintiff companies in the United States during the same period were paid seventeen per cent by way of cash dividends, and more than thirty per cent accumulated for them by way of surplus, and that plaintiffs' unearned premiums at the beginning of the period were in excess of $8,000,000.00 and at the end of the period were in excess of $17,000,000.00, thereby showing a profit of more than one hundred per cent instead of a loss in excess of $7,000,000.00 as reported by the referee.

XLII

Defendant excepts to the following portion of said referee's report, on page 56 thereof, namely:

"The reduction order here under review, had it been in foce during that period would have imposed upon plaintiffs an additional loss of $7,134,751.00."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XLIII

Defendant excepts to the following portion of said referee's report, on page 57 thereof, namely:

"Even if the expenses claimed by plaintiffs in the matters of apportioned head office expenses, taxes alleged excess

[fol. 3959] commissions and certain miscellaneous expenses above tabulated, be denied, and even if the earnings of the investment unearned premiums arising from their underwriting business in this state, be charged against them as profits, the profit remaining is not a reasonable profit."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (b) against both the law and the evidence.

XLIV

Defendant excepts to the following portion of said referee's report, on page 57 thereof, namely:

"Profits arising from the investment of capital, surplus and earned premiums can not be taken into consideration in fixing underwriting rates."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XLV

Defendant excepts to the following portion of said referee's report, on page 57 thereof, namely:

"The statutes above mentioned, in so far as they authorized the consideration of profits arising from the investment of capital, surplus and earned premiums, in fixing underwriting rates, are in violation of the Fourteenth [fol. 3960] Amendment of the Constitution of the United States and of Section 30 Article II of the Constitution of Missouri and are void."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law: (d) against both the law and the evidence.

XLVI

Defendant excepts to the following portion of said referee's report, on page 57 thereof, namely:

"Section 6284, Laws of Missouri, 1923, in so far as it attempts to confer upon courts the power to modify a rate reduction order made by the Superintendent of Insurance of Missouri, by modifying such order by either increasing or reducing the rate fixed in such order is in violation of the Constitution of this state and is void."

on the following ground:

1. That said finding is against the law.

XLVII

Defendant excepts to the following portion of said referee's report, on page 57 thereof, namely:

"The rate reduction order above quoted made by the Superintendent of Insurance of Missouri on the 9th day of Oc-
[fol. 3961] tober, 1922, is unreasonable, confiscatory, and void, and the temporary injunction heretofore granted in his cause should be made permanent."

on the following ground:

1. That said finding is against the law and the evidence; and no injunction was granted in this case, but this was a suit for review.

XLVIII

Defendant excepts to the following portion of said referee's report, on page 58 thereof, namely:

"All other findings of fact and conclusions of law above set forth preceding this concluding summary are adopted as a part of this summary."

on the following ground:

1. That said finding is (a) against the evidence; (b) against the weight of the evidence; (c) against the law; (d) against both the law and the evidence.

XLIX

Defendant excepts to the failure of the referee to find that Federal taxes, excess commissions in St. Louis, legal expenses and taxes paid on property not devoted to the business were not operating expenses.

L

Defendant excepts to the failure of the referee to allow the state credit for interest earnings on unearned premiums, capital and surplus apportioned to Missouri, and [fol. 3962] the increase granted of fifteen per cent in January 1920.

LI

Defendant excepts to the following portion of said referee's report, on page 1 thereof, namely:

"This is on injunction suit."

on the following ground:

1. This is an action to review the reduction order of the Insurance Department under the provisions of the Missouri Rating Act and is not in any sense an injunction suit.

LII

Defendant excepts to the following portion of said referee's report, on page 2 thereof, namely:

"Thereafter plaintiffs brought this suit to enjoin the dedefendant from enforcing the order above quoted."

on the following ground:

1. This is an action to review the reduction order of the Insurance Department under the provisions of the Missouri Rating Act and is not in any sense an injunction suit.

LIII

Defendant excepts to the following portion of said referee's report, on page 57 thereof, namely:

[fol. 3963] "The rate reduction order above quoted made by the Superintendent of Insurance of Missouri on the 9th

day of October, 1922, is unreasonable, confiscatory, and void, and the temporary injunction heretofore granted in this cause should be made permanent."

on the following ground:

1. This is an action to review the reduction order of the Insurance Department under the provisions of the Missouri Rating Act and is not in any sense an injunction suit.

(Original copy of the court's opinion is hereto attached and marked Exhibit "A.")

LIV

Defendant excepts to the failure of the referee to allow any consideration for the admitted profit in the unearned premium reserve which, according to he evidence, is between forty and fifty per cent.

LV

Defendant excepts to the finding of the referee in refusing to consider the effect of the fifteen per cent increase granted in 1920 for the reason that only the experience of plaintiffs within the five-year period can be considered, when in truth and in effect the referee did consider the unearned premiums of plaintiffs prior to the beginning of the period and the incurred losses and incurred expenses which were not paid within the period, but which it was anticipated would be paid following the end of the period.

[fol. 3964] Wherefore, defendant prays the court to sustain its exceptions to the said report of said referee and to set aside said report and finding and that a judgment be entered in favor of the defendant and against the plaintiffs, sustaining the said reduction order of ten per cent, and for such other orders and judgments as the court may deem proper in the premises.

Floyd E. Jacobs, John T. Barker, Attorneys for Defendant

[File endorsement omitted.]

And thereafter, and on the same day, December 22, 1924, the cause coming on for final hearing before the court on the pleadings, the evidence and the referee's report herein,

and the court having fully considered the same, and heard the arguments of counsel, and being fully advised in the premises, doth order and adjudge that the referee's report herein be, and the same is now in all things sustained and confirmed, to which finding by the court defendant at the time excepted and still excepts.

[fol. 3965] Said finding and judgment of the court is in words and figures, as follows:

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

[Title omitted]

JUDGMENT—Entered December 22, 1924

Now on this 22nd day of December, 1924, being one of the days of the November Term, 1924, of this court, come the parties plaintiffs and defendant by their attorneys of record, and the defendant in person. And now comes the Honorable John I. Williamson, referee in this cause, and now files his report herein, together with a transcript of all proceedings had and evidence offered before him, and all exhibits and briefs of counsel filed before him in this cause. And now said referee files herein his supplemental report showing the time spent, services rendered and expenses incurred by him as referee herein; and files also his motion asking for an order of this court making an allowance to the referee for his said services and expenses.

And now the court, having heard the evidence offered upon said motion, and the arguments of counsel for both parties thereon, doth now sustain said motion and doth now order that said John I. Williamson, referee herein, be and he is now allowed the sum of $20,000 as his fee and as compensation to him in full for all services rendered by him in this cause (this amount being inclusive of all sums hereto-[fol. 3966] fore allowed or advanced to the referee as hereinafter mentioned), and that he be allowed the further sum of $627.24 as expenses, which the court finds said referee has reasonably and necessarily incurred herein; and that both of said amounts be taxed as costs herein, to which order the defendant excepts. And the court finds that the parties have heretofore voluntarily paid to the referee the

sum of $2,000 (of which $1,000 was paid by plaintiffs and a like amount by defendant), and that the parties have heretofore under order of court paid to the referee the further sum of $3,000 (of which $1,500 was paid by plaintiffs and a like amount by defendant), making an aggregate of $5,000 advanced and paid by the parties to the referee on account of his services and expenses, and leaving a balance of $15,627.24 now due the referee for services and expenses herein. And the court doth further order and adjudge that one-half of said balance of $15,627.24 shall be forthwith advanced and paid to said referee by the plaintiffs, and that one-half thereof shall be forthwith advanced and paid to said referee by the defendant, and that the parties or party ultimately prevailing herein shall recover the amount so paid from the party or parties ultimately losing herein, to which order defendant excepts.

And now comes defendant and files herein his motion to quash the foregoing order fixing the amount of the referee's fee and ordering it paid as aforesaid, which motion is now by the court overruled, to which ruling defendant excepts.

[fol. 3967] And now the court doth order that the fees and expenses of R. L. Blume, stenographer, for reporting and transcribing the testimony and proceedings before the referee, in the sum of $3,725.96 be allowed to said R. L. Blume, and that the same be taxed as costs herein; and the court finds that of this sum the plaintiffs have advanced and paid to said Blume one-half, or $1,862.98, and the defendant has advanced and paid to said Blume $391.28 on account, leaving balance due said Blume from defendant of $1,471.70. And the court doth order and adjudge that the parties or party ultimately prevailing herein shall recover the amounts so paid from the party or parties ultimately losing herein.

And now the defendant is by the court given leave to file his term bill of exceptions herein at any time during this November term, 1924.

And now plaintiffs ask leave of court to amend their petition by interlineation, to which defendant objects; and said objection is by the court overruled and leave is granted as asked, to which order defendant excepts; and plaintiffs amend their petition accordingly.

And now plaintiffs file exceptions to portions of Section XI of the referee's report, and defendant files exceptions to the referee's report herein, and the court being fully advised in the premises doth overrule plaintiffs' said exceptions, to which ruling plaintiffs except; and the court being fully advised doth overrule defendant's said exceptions, to which ruling defendant excepts.

[fol. 3968] And now this cause comes on for final hearing before the court upon the pleadings, the evidence and the referee's report herein; and the court having fully considered the same and having heard the arguments of counsel, and being fully advised in the premises, doth order and adjudge that the referee's report herein be, and the same is now, in all things sustained and confirmed; and the court now finds the issues herein in favor of the plaintiffs and against the defendant, and the court finds the plaintiffs are entitled to the relief prayed for in their petition and recommended by the referee in his said report; and the court finds that the rate reduction order, in issue herein, made and promulgated by the defendant, Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, on October 9, 1922, is unreasonable, unjust, confiscatory and void, and should be cancelled, set aside and for naught held.

Defendant excepts.

Wherefore, it is by the court considered, ordered, adjudged and decreed that the aforesaid rate reduction order, and each and every finding, order and direction therein made and promulgated by the defendant Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, under date of October 9, 1922 (wherein said defendant ordered a reduction of 10 per cent in the rates charged by the stock fire, lightning, hail and windstorm insurance companies doing business in Missouri on fire, lightning, hail and windstorm insurance business written in the State of Missouri), be and the same is now cancelled, set aside and for naught held; and that all of the costs of [fol. 3969] this cause be and the same are now taxed against the defendant; and that the plaintiffs have and recover of and from the defendant their costs herein laid out and expended, for all of which let execution issue.

Defendant excepts.

And now defendant files his motion for a new trial herein, which motion the court being fully advised doth now overrule, to which ruling defendant excepts.

And now defendant files his motion in arrest of judgment herein, which motion the court being fully advised doth now overrule, to which ruling defendant excepts.

And now defendant files his application and affidavit for an appeal, which application is by the court granted and the defendant is by the court allowed an appeal herein to the Supreme Court of Missouri as prayed. And the defendant is by the court given leave to file bill of exceptions herein at any time until on or before February 28, 1925.

Henry J. Westhues, Judge.

[File endorsement omitted.]

[fol. 3970] And thereafter, and on the same day, December 22, 1924, and during the same term of court, and within four days after such finding and judgment, defendant files his motion for a new trial herein, which motion was by the court duly considered, and the court, after being fully advised, overruled said motion for new trial, to which ruling defendant excepted at the time and still excepts.

Said motion for a new trial is in words and figures, as follows:

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

[Title omitted]

DEFENDANT'S MOTION FOR NEW TRIAL—Filed December 22, 1924

Now at this date comes the defendant and moves the court to set aside the judgment herein rendered overruling defendant's exceptions to the report of the referee filed herein, and to grant a new trial on the following grounds, to-wit:

1. Because the judgment of the court should have been in favor of the defendant and against the plaintiffs.

2. Because the finding of the court should have been in favor of the defendant.

3. Because the court erred in excluding competent and relevant evidence offered upon behalf of the defendant.

[fol. 3971] 4. Because the court erred in admitting irrelevant and incompetent testimony offered by the plaintiffs and over the objections of the defendant.

5. Because the finding and judgment of the court is against the evidence; the weight of the evidence; against the law; and against both the law and the evidence.

6. Because the court erred in allowing excessive and exorbitant fees to the referee.

7. Because the court erred in directing the payment of the fee of the referee by the state and out of the particular fund named in the court's order.

8. Because the court erred in making its order directing the payment of the fee of the referee and providing how the same shall be paid.

9. Because the court erred in overruling defendant's exception No. 1, to the report of the referee.

10. Because the court erred in overruling defendant's exception No. 2, to said report of said referee.

11. Because the court erred in overruling defendant's exception No. 3, to said report of said referee.

12. Because the court erred in overruling defendant's Exception No. 4, to said report of said referee.

13. Because the court erred in overruling defendant's exception No. 5, to said report of said referee.

14. Because the court erred in overruling defendant's exception No. 6, to said report of said referee.

15. Because the court erred in overruling defendant's exception No. 7, to said report of said referee.

[fol. 3972] 16. Because the court erred in overruling defendant's exception No. 8, to said report of said referee.

17. Because the court erred in overruling defendant's exception No. 9, to said report of said referee.

18. Because the court erred in overruling defendant's exception No. 10, to said report of said referee.

19. Because the court erred in overruling defendant's exception No. 11, to said report of said referee.

20. Because the court erred in overruling defendant's exception No. 12, to said report of said referee.

21. Because the court erred in overruling defendant's Exception No. 13, to said report of said referee.

22. Because the court erred in overruling defendant's Exception No. 14, to said report of said referee.

23. Because the court erred in overruling defendant's Exception No. 15, to said report of said referee.

24. Because the court erred in overruling defendant's Exception No. 16, to said report of said referee.

25. Because the court erred in overruling defendant's Exception No. 17, to said report of said referee.

26. Because the court erred in overruling defendant's Exception No. 18, to said report of said referee.

27. Because the court erred in overruling defendant's Exception No. 19, to said report of said referee.

28. Because the court erred in overruling defendant's Exception No. 20, to said report of said referee.

29. Because the court erred in overruling defendant's Exception No. 21, to said report of said referee.

30. Because the court erred in overruling defendant's Exception No. 22, to said report of said referee.

[fol. 3973] 31. Because the court erred in overruling defendant's Exception No. 23, to said report of said referee.

32. Because the court erred in overruling defendant's Exception No. 24, to said report of said referee.

33. Because the court erred in overruling defendant's Exception No. 25, to said report of said referee.

34. Because the court erred in overruling defendant's Exception No. 26, to said report of said referee.

35. Because the court erred in overruling defendant's Exception No. 27, to said report of said referee.

36. Because the court erred in overruling defendant's Exception No. 28, to said report of said referee.

37. Because the court erred in overruling defendant's Exception No. 29, to said report of said referee.

38. Because the court erred in overruling defendant's Exception No. 30, to said report of said referee.

39. Because the court erred in overruling defendant's Exception No. 31, to said report of said referee.

40. Because the court erred in overruling deefndant's Exception No. 32, to said report of said referee.

41. Because the court erred in overruling defendant's Exception No. 33, to said report of said referee.

42. Because the court erred in overruling defendant's Exception No. 34, to said report of said referee.

43. Because the court erred in overruling defendant's Exception No. 35, to said report of said referee.

44. Because the court erred in overruling defendant's Exception No. 36, to said report of said referee.

45. Because the court erred in overruling defendant's Exception No. 37, to said report of said referee.

[fol. 3974] 46. Because the court erred in overruling defendant's Exception No. 38, to said report of said referee.

47. Because the court erred in overruling defendant's Exception No. 39, to said report of said referee.

48. Because the court erred in overruling defendant's Exception No. 40, to said report of said referee.

49. Because the court erred in overruling defendant's Exception No. 41, to said report of said referee.

50. Because the court erred in overruling defendant's Exception No. 42, to said report of said referee.

51. Because the court erred in overruling defendant's Exception No. 43, to said report of said referee.

52. Because the court erred in overruling defendant's Exception No. 44, to said report of said referee.

53. Because the court erred in overruling defendant's Exception No. 45, to said report of said referee.

54. Because the court erred in overruling defendant's Exception No. 46, to said report of said referee.

55. Because the court erred in overruling defendant's Exception No. 47, to said report of said referee.

56. Because the court erred in overruling defendant's Exception No. 48, to said report of said referee.

57. Because the court erred in overruling defendant's Exception No. 49, to said report of said referee.

58. Because the court erred in overruling defendant's Exception No. 50, to said report of said referee.

59. Because the court erred in overruling defendant's Exception No. 51, to said report of said referee.

60. Because the court erred in overruling defendant's Exception No. 52, to said report of said referee.

[fol. 3975] 61. Because the court erred in overruling defendant's Exception No. 53, to said report of said referee.

62. Because the court erred in overruling defendant's Exception No. 54, to said report of said referee.

63. Because the court erred in overruling defendant's Exception No. 55, to said report of said referee.

64. Because the court should have sustained said exceptions of the defendant, and each of them, to said report of said referee, and should have entered judgment in favor of the defendant.

Floyd E. Jacobs, John T. Barker, Attorneys for Defendant.

[File endorsement omitted.]

And thereafter, and on the same day, December 22, 1924, and during the same term of court, and within four days after such finding and judgment, defendant files his motion in arrest of judgment herein, which motion, the court, after being fully advised, doth now overrule, to which ruling defendant excepted at the time and still excepts.

Said motion in arrest of judgment is in words and figures, as follows:

[fol. 3976] IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

[Title omitted]

MOTION IN ARREST OF JUDGMENT—December 22, 1924

Now comes the defendant, and moves the court to arrest the judgment in this cause, for the following reasons, to-wit:

1. Because the court was without jurisdiction to try the cause, and the judgment is void on its face.

2. Because on the whole record judgment should have been rendered in favor of the defendant and against the plaintiffs.

Floyd E. Jacobs, John T. Barker, Attorneys for Defendant.

[File endorsement omitted.]

And thereafter, and on the same day, December 22, 1924, and during the same term of court, defendant files his application and affidavit for an appeal, which application is by the court granted, and the defendant is by the court [fol. 3977] allowed an appeal herein to the Supreme Court of Missouri, as prayed.

Said affidavit for appeal is in words and figures as follows:

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

[Title omitted]

AFFIDAVIT FOR APPEAL—Filed December 22, 1924

STATE OF MISSOURI,
County of Cole, ss:

Ben C. Hyde, of lawful age, being first duly sworn, makes oath and says that the appeal prayed for in the above entitled cause is not made for vexation or delay but because the affiant believes that the appellant is aggrieved by the judgment and decision of the court.

Ben C. Hyde, Superintendent.

Subscribed and sworn to before me this 22nd day of December, 1924. Richard R. Nacy, Clerk Circuit Court Cole County, Missouri.

[File endorsement omitted.]

[fol. 3978] STIPULATION AS TO EXHIBITS

It is hereby stipulated and agreed that as to those exhibits which are too large to incorporate in the bill of exceptions and in the abstract of the record, that they may be produced and filed in the Supreme Court and have the same effect as if incorporated in the bill of exceptions and in the abstract of the record.

Bates, Hicks & Polonie, Leahy, Saunders & Walther, Cockrill & Armistead, Hogsett & Boyle, Attorneys for Plaintiffs. Floyd E. Jacobs, John T. Barker, Attorneys for Defendant.

ORDER SETTLING BILL OF EXCEPTIONS

And thereafter, and on the same day, December 22, 1924, and during the same term of court, defendant is given leave to file a bill of exceptions herein at any time until on or before February 28, 1925.

Wherefore, defendant prays the court to settle and allow this, his bill of exceptions, and that the same may be signed, sealed and made a part of the record in this cause, which [fol. 3979] is accordingly done this 6th day of February, 1925.

F. J. Westhues, Judge of the Circuit Court of Cole County, Missouri.

Bill of exceptions approved.

Bates, Hicks & Folonie, Leahy, Saunders & Walther, Cockrill & Armistead, Hogsett & Boyle, Attorneys for Plaintiffs. Floyd E. Jacobs, John T. Barker, Attorneys for Defendant.

STENOGRAPHER'S CERTIFICATE

The foregoing is a full, true and complete record of all the proceedings had at the trial of said cause, including all the evidence and all the rulings of the court, and exceptions taken to adverse rulings of the court by the defendant.

Richard L. Blume, Stenographer.

On March 6th, 1925, the Supreme Court made an order that all the original exhibits in this case be filed in the Supreme Court, and that the same be not printed in the abstract of the record—and all of such exhibits are herewith filed with this abstract.

The foregoing is a complete abstract of all proceedings had in this cause.

John T. Barker, Floyd E. Jacobs, Attorneys for Appellant.

[fol. 3980] And thereafter, to wit, on March 14th, 1925, the appellant filed herein his printed statement, brief and argument for appellant, wherein was contained, among other things, the following:

[fol. 3981]

IV

Only reasonable and prudent operating expenses can properly be charged against the state; excess profit taxes, surtaxes and other federal taxes, excess commissions paid in St. Louis, taxes paid on property not devoted to the insurance business, donations, etc., are not operating expenses but corporate expenses, and must be borne by the stockholders of the corporations.

Co. v. Wellman, 143 U. S. 339, 12 Sup Ct. Rep. l. c. 402.
State v. Express Co., 85 Neb. 25, 42 L. R. A. (N. S.) 396.

[fol. 3982] Mo. Rate Cases, 230 U. S. 474, 33 Sup. Ct. Rep. l. c. 979.
Minn. Rate Cases, 230 U. S. 352, 33 Sup. Ct. Rep. 762.
Co. v. U. S., 52 L. R. A. (N. S.) l. c. 51.
Co. v. Lewis, 180 N. Y. Supp. l. c. 586.
Ark. Rate Cases, 187 Fed. 290.
State v. Co., 24 Nev. 53, 49 Pac. 945.
Smith v. Ames, 169 U. S. 466, 18 Sup. Ct. Rep. 418.
Co. v. Co., 10 I. C. R. 327, 52 L. R. A. (N. S.) 51-62.
R. R. v. U. S., 99 U. S. 402.
Gas Co. v. N. Y., 157 Fed. 849.
Co. v. City, 144 Iowa, 426, 48 L. R. A. (N. S.) 1025.
Co. v. Galveston, 258 U. S. 388, 42 Sup. Ct. Rep. l. c. 356.
Co. v. Nixon, 181 N. Y. Supp. 623.
Re North Adams, 27 Mass. G. & E. L. C. R. 17.
Legg v. Co., 1 Calif. R. C. R. 11.
In re Freight Rates, 9 I. C. R. 382.
Co. v. Com., 206 U. S. 441, 27 Sup. Ct. Rep. 700.
Darnell v. Edwards, 244 U. S. 564, 37 Sup. Ct. Rep. 702.
State ex rel. v. Com., 252 S. W. l. c. 452.
In re Water Co., 7 Mo. P. S. C. l. c. 379.
In re Gas Co., 9 Mo. P. S. C. 465.
Springfield v. Springfield, 10 Mo. P. S. C. l. c. 47.
Re Railway Co., 11 Mo. P. S. C. l. c. 36.
Re Railway Co., 11 Mo. P. S. C. l. c. 86.

Re Railway Co., 7 Mo. P. S. C. l. c. 202.
Re Railway Co., 11 Mo. P. S. C. l. c. 79.
Re Water Co., 5 Mo. P. S. C. 620.
Re Electric Co., 10 Mo. P. S. C. 335.
10 C. J., 411-12-13-18.
10 Fletcher Cyc. Cor., pp. 747-8.

[fol. 3983] V

In arriving at the earnings of all the fire insurance companies doing business in Missouri all of their income from such business must be considered. Interest earnings constitute income and must be considered.

Groesbeck v. R. R., 250 U. S. 607, 40 Sup. Ct. Rep. 38.
People v. Roberts, 52 N. Y. Sup. 859.
St. John v. R. R., 89 U. S. 136.
Co. v. Reynolds, 244 U. S. 574 5 A. L. R. 13.
Co. v. Gill, 156 U. S. 649, 15 Su Ct. Rep. 484.
State v. Co., 24 Nev. 53, 49 Pac. 945.
Ark. Rate Cases, 187 Fed. 290, 230 U. S. 553.
Fall River v. Com., 228 Mass. 575, 117 N. E. 915.
Co. v. U. S., 52 L. R. A. (N. S.) 16.
Ark. Rate Cases, 168 Fed. 730.
Co. v. Minn., 186 U. S. 257, 22 Sup. Ct. Rep. 900.
Co. v. Lewis, 180 N. Y. Supp. 570.
Com. v. Co., 291 Ill. 209, 125 N. E. 891.
Co. v. Com., 177 N. W. 25.
Co. v. Schnull, 188 Ind. 87, 122 N. E. 225.
Co. v. Works, 217 Pac. l. c. 509.
Co. v. Co., 44 Ohio St. 287.
State ex rel. v. R. R., 120 N. W. 869, 25 L. R. A. (N. S.) 1001.
Co. v. Com., 138 N. Y. Supp. 434.
R. R. v. Com., 83 S. E. 288.
In re Light Co., 9 Mo. P. S. C. l. c. 408.
In re Telephone Co., 8 Mo. P. S. C. l. c. 449.
In re Power Co., 11 Mo. P. S. C. 548.
In re Traction Co., 9 Mo. P. S. C. 505.
10 Fletcher Cyc. Cor., pp. 745-6.
10 C. J., 418.
19 C. J., 855.
4 R. C. L., 636-7.

[fol. 3984] VI

For rate making purposes the calculation of profit or loss of fire insurance companies can only be made upon the basis of premiums received, losses paid and expenses paid. Earned premiums, incurred losses and incurred expenses cannot be considered for rate making purposes.

Sec. 6283, R. S. of Mo. 1919.
Sec. 6280, R. S. of Mo. 1919.
Sec. 6281, R. S. of Mo. 1919.

VII

Since the passage of the Rating Act in 1915 the Insurance Department consistently interpreted the law to require a consideration only of written premiums, paid losses and paid expenses; the construction of executive officers entrusted with the duty of carrying out a statute is entitled to great weight.

State ex rel. v. Power Co., 223 l. c. 83.
Statt ex rel. v. Gordon, 266 Mo. 394.
State ex rel. v. Y. M. C. A., 259 Mo. 233.
Folk v. St. Louis, 250 Mo. 116.
Ewing v. County, 216 Mo. 681.
Smoot v. Assn., 138 Mo. App. 438.
State ex rel. v. Wilson, 151 Mo. App. 723.
County v. Gordon, 241 Mo. 569.
State ex inf. v. Harring, 208 Mo. 708.
In re Docket, 266 Mo. l. c. 54.
In re Docket, 232 S. W. 454.
36 Cyc. 1140.

VIII

The evidence in this case conclusively shows that respondents have made more than a reasonable profit in Missouri during this five year period, and the reduction order should stand.

[fol. 3985] IX

Respondents made more than a reasonable profit upon their business throughout the United States, which profit about equals the profit made in Missouri, and shows that

during this period respondents earned more than a reasonable profit within and without the state.

X

All losses, including conflagration losses, were paid during this period with premiums received by respondents, and no allowance should be made for conflagration liability inasmuch as all losses have been paid and to make a further allowance would be a duplication.

[fol. 3986] Conclusion

These companies were required by law to file sworn annual statements with the Insurance Department showing their experience in Missouri. It was on these statements that rates were made and this reduction ordered. Such [fol. 3987] statements show that these companies credited themselves with a total expense of $30,371,234 (Ab. 3079, Defendant's Exhibit 2039). In such statements were donations to charity in the sum of $1,074,388 (Ab. 3102); luncheons and entertainment $124,890 (Ab. 3104); and investment expenses of all kinds. These companies frankly admitted during the trial that they padded these expense accounts, duplicated their expenses and overcharged Missouri, and that such reports to Missouri were undefensible (Ab. 982, 983, 984).

The only excuse offered for overcharging Missouri in these reports was that the actuaries of the insurance companies did not understand such reports (Ab. 982, 983, 984, 967, 490, 619). These blanks are in evidence in this case (Plaintiffs' Exhibits 1348 to 1352 inclusive) and the court will see at a glance that these companies did understand these reports and that therefore these duplications were made for the purpose of deceiving the state. The mere suggestion that these skilled actuaries of these insurance companies could not understand these reports is farcical. During this trial they testified that for the purpose of this law suit they deducted all of these duplications and all donations and entertainment expenses (Ab. 2885, 2895). It is apparent, however, that this statement is not true because before the law suit started their reports to Missouri

showed an expense of $30,371,234, and after these duplications, donations, etc., were deducted, as they say they were, their expenses in this law suit amounted to $33,103,634 (Ab. 2983, Plaintiffs' Exhibit 1360). Having admitted that they [fol. 3988] duplicated their expenses to the state when filing their reports and padded their expense accounts, it stands to reason that they probably did the same thing in this law suit, as the evidence in fact shows they did.

They testified time and time again that all investment expenses were deducted from the figures in this law suit, and yet Mr. Chapman, president of the American Central Fire Insurance Company, testified that such expenses, instead of being one-eighth of 1%, were 3% or 4% and that they were charged against the state (Ab. 2312, 2313, 2323).

These companies also attempted to defend the padding of their expense account and their duplications to the state by saying that they were mistaken just the same as Commissioner Hyde was mistaken in the figures he used in his reduction order. It was not necessary for any figures to be used in the reduction order and while those actually used differ from the figures introduced by witness McGee of the department in this suit, it is apparent that they were on a different basis. It will be observed, however, that the figures as submitted in the reduction order as compared with the figures in this case are in favor of plaintiffs, and if a mistake was made by the state in the reduction order it is wholly immaterial and besides it was in favor of these companies. While on the other hand, all of the mistakes made by the companies in this case have been in their own favor. They reported expenses of only $30,000,000, but during the trial increased their expenses to $33,000,000. They reported a profit to the state in excess of $5,000,000, [fol. 3989] but during the trial show a profit slightly in excess of $3,000,000. If these companies can derive any pleasure in criticizing the figures submitted by the state prior to the filing of this suit, we call attention to the fact that all of their figures submitted before the suit were wrong, and mistakes made in practically every tabulation, and every mistake was in their own favor, while the mistakes we made, if any, were against us.

The referee in this case failed to pass upon many of the important questions and it is apparent that he was confused between rate making and taxation.

Respondents failed entirely to meet the burden of proof imposed upon them by the Missouri Rating Act, and the state is confident that such failure warrants the sustaining of the reduction order.

On the merits of the case the evidence is conclusively in favor of the state and shows that after this reduction order is in effect these companies will still earn more than $11,000,000 in Missouri on a five year test, which represents an earning against apportioned capital of 65% or against the apportioned capital and surplus of more than 20%, or against the total income of these companies of nearly 14%.

The profits made by these insurance companies, according to the evidence in this case, are larger than any profits made by any corporation with which we are familiar.

We finish this brief with the utmost confidence in our position and confidently assert that a reading of this record will demonstrate beyond the possibility of a doubt that the [fol. 3990] **reduction order must be sustained, in which event a saving will be effected to the citizens of Missouri of practically $2,000,000 a year, and that in such event these companies will still earn an enormous return upon their invested capital and surplus in Missouri.**

We therefore respectfuly urge that the finding of the referee and judgment of the court be set aside and that the reduction order be upheld.

Respectfully submitted, Floyd E. Jacobs, John T. Barker, Attorneys for Appellant.

[fol. 3991] And thereafter, to wit, on May 4, 1925, the respondents filed herein their printed statement, brief and argument for respondents, wherein was contained, among other things, the following:

[fol. 3992]

III

There are no Improper or Excessive Expenses Included in Respondents' Tabulations of Experience

(a) Excess commissions in St. Louis are expenses which the respondents are compelled by conditions to pay.
(Abst. 2721, 2344, 2678, 1304, 2750.)

(b) Federal taxes are properly treated as operating expenses.

Galveston Electric Co. v. Galveston, 258 U. S. 388, l. c. 399.

Georgia Railway & Power Co. v. Railroad Commission, 43 Sup. Ct. Rep. l. c. 682.

Oklahoma Natural Gas Co. v. Corporation Commission, 90 Okla. 84, 216 Pac. 217.

[fol. 3993] Municipal Gas Co. v. Public Service Corporation, 113 Misc. Rep. 748; 186 N. Y. Sup. 541.

Consolidated Gas Company v. Newton, 207 Fed. 231. Note in 23 A. L. R. 826.

Re Coast Counties Gas & Electric Co., P. U. R., (1924) pages 415-426.

(c) There are no expenses for donations or entertainments included in respondents' figures.
(Abst. 3649.)

(d) Taxes on property not devoted to the insurance business are excluded from respondents' figures.
(Abst. 3649.)

(e) Commissions to brokers are not paid by respondents, and are therefore not included in respondents' expense figures.

(f) Legal expenses incurred by respondents are properly included.

Arkansas Rate Cases, 187 Fed. l. c. 315, 316.

As to all expenses included in respondents' tabulations, the presumption is, in the absence of any testimony to the contrary, that they were reasonably incurred and that the amounts thereof are reasonable.

Dayton Goose Creek Railway Co. v. U. S., 44 Sup. Ct. Rep. 169.

[fol. 3994]

IV

Interest Earnings on the Capital and Surplus of the Companies Cannot be Taken Into Account in Fixing a Level Rates for Underwriting.

1. The undisputed evidence shows a clear line of separation between the underwriting and investment activities of the insurance companies, each of which activities is productive of a profit or a loss.

The Insurance Commissioners' Convention has ruled that no part of the investment profit should be considered in arriving at the underwriting profit.

The Income Tax Law of Congress recognizes the clear line of separation between the two activities, by imposing taxes calculated in different ways upon investment profit and underwriting profit respectively.

Revenue Act of 1921, Section 246a.
Revenue Act of 1924, Section 6336.

The line of separation between the two activities is clearly marked by the annual statements which Missouri and the other forty-seven states require each year.
(See pages 10, 11, Exhibit 1.)

2. The reduction order, in so far as it takes into account interest earnings on capital and surplus in order to reduce underwriting rates deprives the companies of their property without due process of law.

Smyth v. Ames, 169 U. S. l. c. 540, 541.
Minnesota Rate Case, 230 U. S. 352.
State ex rel. Case v. Public Service Commission, (Mo. Sup.) 249 S. W., l. c. 962.
Marty v. Kansas City Light & Power Co., (Mo. Sup.) 259 S. W., l. c. 796.
[fol. 3995] Hackworth v. Missouri Southern R. R. Co., 286 Mo. 282.

The leading case upon this subject is the so-called Nebraska Rate Case, entitled Smyth v. Ames, 169 U. S. l. c. 540, 541, where the Supreme Court said:

"If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss if the company earned on its interstate business enough to give it just compensation in respect of its entire line and all its business, interstate and domestic. We cannot concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a state for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the state that the state can prescribe, [fol. 3299] and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business."

In the Minnesota Rate Case, 230 U. S. 352, the Court had for consideration the validity of orders of the Minnesota Railroad and Warehouse Commission and legislative acts of the State of Minnesota prescribing maximum freight and passenger rates applying within the state. The Court found that a holding of the Warehouse Commission and the inferior courts rested upon the values of certain investments of the Northern Pacific Railway Company, and the Court said (l. c. 440):

"These securities and their value in the market rest upon the entire property of the company. They include assets of considerable value (for example the stock of the Northwestern Improvement Company, owning extensive coal lands), which however do not form a part of what may be called the operating property of the company or that devoted to the public service, upon which the fair return is to be calculated. Referring to the market value of the securities the master said:

'Assets and property not devoted to public service have not been valued, and as they are a large element in stock valuation it follows that value of bonds and stocks is wholly unreliable and cannot be used in these cases as an element in determining the value of operating property or as a basis for rate making.'

In this view the master was undoubtedly right."

The Supreme Court in the case cited holds that invested assets of a railroad corporation, although in coal lands, which might perhaps furnish coal for the operation of the railroad, are not to be considered. The holdings of investment securities by the railroad company, and their value, are to be entirely eliminated from consideration because [fol. 4000] they are not a part of the "operating property" and are therefore not proper to be used in any "basis for rate making." In like manner the investments of the insurance companies in bonds, stocks and mortgages are not any part of their operating property. Their operations consist in the rendition of service for a stipulated price, not by means of tangibles or by means of stocks, bonds and mortgages, but by the execution of insurance contracts to furnish protection and indemnity, and the employment of persons to see that such protection and indemnity is furnished according to the contractual terms.

[fol. 4001] The same principle has been likewise applied in cases involving rates on other kinds of public utilities, such as gas companies, electric light companies and power companies, and the same principle has been uniformly applied as in the railroad rate cases.

In the case of People v. Public Service Commission, 121 N. E. (N. Y.) 777, the court said:

"The defendants would have us say that the plaintiff, if it makes enough from electricity, must supply its gas for nothing. The Legislature has not the purpose, if we assume that it had the power, to bring that result to pass."

In the case of Brooks-Scanlon Co. v. Railway Commission of Louisiana, 251 U. S. 396, the Court held that where a railroad serving the public is owned and operated by a lumber company in connection with its lumber business, it is the business of the railroad and not the entire business of the company which determines whether the railroad may be abandoned as unprofitable. The Supreme Court of the United States held that a carrier could not be compelled to carry on even a branch of business at a loss, citing Northern Pacific Railroad Co. v. North Dakota, 236 U. S. 585; Norfolk & Western Railroad Co. v. West Virginia, 236 U. S. 605. The Court held that the plaintiff might be making money from its sawmill and lumber business, but [fol. 4002] that would not compel it to spend those profits for the purpose of maintaining a railroad.

An annotation to the case of Re Lynchburg Traction & Power Co., decided by the Virginia State Corporation Commission, found in P. U. R. 1922 B, page 740, collects a vast array of cases holding that each service performed by public utilities must be self-supporting. This annotation states that courts and commissions have, with almost complete unanimity, held that the patrons of an electric department of a utility cannot be made to pay more than a fair rate in order to recoup the loss sustained in street railroad operation. After citing the cases of the Supreme Court of the United States, above referred to, this annotation contains numerous citations of decisions of corporation commissions of various states where the principle of separation has been applied to companies doing a street railway and municipal lighting business, electric and water business, gas and electric business, etc.

We earnestly insist that the principle of the foregoing cases is applicable to appellant's reduction order; and that in so far as his order attempts to take into account interest earnings on capital and surplus in calculating the companies' profit or loss for the purpose of reducing underwriting rates, his order is confiscatory and in violation of the due process clause of the federal and state constitutions.

[fol. 4003] And thereafter, to wit, on May 11, 1925, the following further proceedings were had and entered of record in said cause in said Supreme Court of Missouri:

[Title omitted]

ARGUMENT AND SUBMISSION

"Now, at this day, come the said parties by attorneys and after arguments herein, submit this cause to the court."

And thereafter, to wit, on May 30, 1925, the respondents filed in said cause their printed supplemental briefs, which said supplemental briefs contain, among other things, the following:

RESPONDENTS' SUPPLEMENTAL BRIEFS—Filed May 30, 1925

[fol. 4004] Since the oral arguments in this case, a case has come to our attention bearing upon the proposition appearing in the original brief of respondents, (page 28), that no right exists in the superintendent of insurance to regulate expenses by implication arising out of the law.

The case is that of Importers' & Exporters' Ins. Co. v. Rhodes, 239 N. Y. 420; s. c. 126 N. E. Rep. 648, decided Feb. 3, 1925, by the Court of Appeals of New York. That case arose upon a petition for mandamus by a fire insurance company against the New York Fire Insurance Rating Organization, to compel it to furnish its services to the petitioner. The rating organization was organized pursuant to a statutory requirement, that fire insurance companies maintain such an agency for the purpose of making rates for fire insurance upon risks within this state. The law also provided that in prescribing such rates the organization should be governed by the principle "that the rates charged for fire insurance shall be reasonable." The purpose of the body was to "compute uniform standard non-discriminatory rates."

The court holds that the organization is a statutory creation and not a voluntary one and says: "The distinction is obvious between a rating association existing under the

statute and one existing solely by agreement of members." The company was by law permitted to gather information as to commissions and brokerage and cost of business, but the court says: "The fixing of such sums by the rating commission is another matter."

[fol. 4005] The rating organization so created by statute undertook to exclude a fire insurance company from its services because the insurance company paid commissions to agents which the rating organization considered unreasonable. The court says:

"If the rating organization is in effect to be clothed with the revolutionary attributes of a state agency to regulate commissions, the legislative authority should be explicit in terms and the court should not smuggle such a grant into the law under the guise of liberal construction."

The rule applied by the court is equally applicable to the law giving powers to the Insurance Superintendent in this case, which are no more comprehensive in this particular than those entrusted to the rating organization in the case cited. The court in the case cited further said:

"The question is one of the statutory power of the rating organization to make rules. If we assume that the Legislature, if it had seen fit to do so, might have included in its grant of power to regulate rates the further power as a condition of service to regulate agents' and brokers' commissions, the next logical step would be to include, limit, and regulate as factors in rate making all expenses of the insurance companies, such as salaries and office expenses. The question would then arise whether such a delegation of legislative power was for the benefit and protection of the public (German Alliance Ins. Co. v. Lewis, 233 U. S. 389), or whether it interfered with the right of fire insurance com-[fol. 4006] panies to regulate their own business in regard to agents' and brokers' commissions, and the number of agencies they should establish, and other matters of internal management—a question which we need not consider at this time. Northwestern Nat. Ins. Co. v. Fishback, (Wash.) 228 Pac. 516.

The rules of the rating organization must be lawful, proper, and within the scope of the authority granted. By this test, we fail to find in the statute the far-reaching power

which the respondent assumes to exercise. If the language of the statute does not reach the case, the court has no jurisdiction to enlarge its scope beyond what the Legislature has permitted."

We respectfully submit that the reasoning and language of the court as above set out and the limits of the statutory grant of power there existing are exactly parallel to those involved here, and the court should give great weight to this authority as involving an identical question of statutory construction.

It will be noted that the New York Court of Appeals in the case cited seeks to extend the logic to such an extent as to make it an absurdity by stating that the

"next logical step would be to include, limit, and regulate as factors in rate making all the expenses of the insurance companies, such as salaries and office expenses."

[fol. 4007] No doubt that court would have been astounded had it known a contention so extreme was at that very time being urged in the courts of a sister state, and that so insupportable a claim was being urged upon this Honorable Court and its approval sought.

[fol. 4008]

V

The adoption by the Superintendent of the written and paid basis in his calculation of underwriting profit is fundamentally erroneous, and is a denial of due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States.

Since respondents' brief was written the Supreme Court of the United States has handed down a decision which we submit is of the utmost importance in its bearing upon the contentions in our original brief respecting the proper method of ascertaining underwriting profit or loss in this cause. We refer to the case of Northern Pacific Ry. Co. v. Department of Public Works of Washington, 45 Sup. Ct. Rep. 412 (reported in Supreme Court Reporter advance sheets dated May 1, 1925).

In that case the Public Service Commission of the State of Washington instituted a proceeding before itself for the purpose of investigating rates for transportation of saw-

logs in that state, and making such order thereon as the facts should warrant. Hearings were had in which the shippers and the carriers participated, after which the Commission made an order reducing rates. Suit was filed by [fol. 4009] the carriers against the Commission to set aside the rate reduction order. In such suit the findings of fact upon which the order proceeded were attacked as arbitrary and unsupported by the evidence, and the rates were assailed as confiscatory. The trial court denied relief to the carriers, and its decree was affirmed by the Supreme Court of the state, three judges dissenting. The case was then taken to the Supreme Court of the United States.

The Supreme Court of the United States in an opinion by Mr. Justice Brandeis, all the justices concurring, held that the method by which the Commission attempted to ascertain the amount of profit or loss was fundamentally erroneous, and that the adoption of such erroneous method was a denial of due process of law.

In the course of the opinion Mr. Justice Brandeis, after reviewing the evidence offered by the carriers, said (l. c. 413-414):

"This evidence was in character persuasive. It was fairly specific, direct, and comprehensive. If the facts warranted, the shippers and the public officials might, of course, have shown by evidence of similar character that the carriers' evidence was inherently untrustworthy, or it might have been overcome by more persuasive evidence to the contrary. Little attempt was made to show that any testimony introduced by the carriers was inherently untrustworthy. Little conflict with the evidence of the carriers was developed by the evidence as to specific facts introduced for the shippers and the public. Apparently neces- [fol. 4010] sary inferences from specific facts established by the carrriers were not explained away. The department's findings concerning operating costs rested largely upon deductions from data found in published reports of the carriers and in their exhibits filed in this case. Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating cost of this traffic was to the several carriers, the department created a composite figure representing the weighted average operating cost per $1,000 gross ton miles of all revenue freight carried on

the four systems and made that figure a basis for estimating the operating cost of the log traffic in Washington. This was clearly erroneous.

A precise issue was the cost on each railroad of transporting logs in carload lots in Western Washington, the average haul on each system being not more than 32 miles.

In using the above composite figure in the determination of this issue the department necessarily ignored, in the first place, the differences in the average unit cost on the several systems, and then the differences on each in the cost incident to the different classes of traffic and articles of merchandise, and to the widely varying conditions under which the transportation is conducted. In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul, in the character of the commodity, in the configuration of the country, in the density of the traffic, in the daily loaded car movement, in the nature of the equipment employed, in the extent to which the equipment is used, and in the expen- [fol. 4011] ditures required for its maintenance. Main line and branch line freight, interstate and intrastate, carload and less than carload, are counted alike. The department's error was fundamental in its nature. The use of this factor in computing the operating costs of the log traffic vitiated the whole process of reasoning by which the department reached its conclusion.

The mere admission by an administrative tribunal of matter which under the rules of evidence applicable to judicial proceedings would be deemed incompetent (United States v. Abilene & Southern Ry. Co., 265 U. S. 274, 288, 44 S. Ct. 565, 68 L. Ed. 1016), or mere error in reasoning upon evidence introduced, does not invalidate an order. But where rates found by a regulatory body to be compensatory are attacked as being confiscatory, courts may inquire into the method by which its conclusion was reached. An order based upon a finding made without evidence (The Chicago Junction Case, 264 U. S. 258, 263, 44 S. Ct. 317, 68 L. Ed. 667), or upon a finding made upon evidence which clearly does not support it (Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541, 547, 32 S. Ct. 108, 56 L. Ed. 308), is an arbitrary act against which courts afford relief. The error under discussion was of this character. It was a denial of due process. Compare New York &

Queens Gas Co. v. McCall, 245 U. S. 345, 348, 38 S. Ct. 122, 62 L. Ed. 337."

We respectfully submit that this case is in point in the case at bar. The adoption by the Superintendent of Insurance of the written and paid basis of calculating underwrit-
[fol. 4012] ing profit is fundamentally erroneous—as much so as the Commission's method of calculating the amount of operating profit was in the Northern Pacific case, supra. The adoption of the written and paid basis is a denial of due process of law, and the Northern Pacific case is a direct authority in support of that proposition.

It is "fundamentally erroneous" for the Superintendent to charge the companies with $83,502,181 of premiums written during the five year period, when they only earned $74,813,813 of premiums during such period. There is no claim made by anybody that the companies earned any more than this latter amount. Notwithstanding this conceded fact, the Superintendent charges us with the full amount of premiums written—or about $8,700,000 in excess of the amount we earned. Such a method is absolutely wrong. It is fundamentally erroneous, and the adoption of it is a clear denial of due process, under the authority of the Northern Pacific case, supra.

This constitutional point was presented at the outset by the respondents in their petition filed in the Circuit Court below. Respondents alleged in their petition that the Superintendent's calculation of profit or loss upon the basis of premiums received and losses and expenses paid (as distinguished from the basis of premiums earned and losses and expenses incurred) "deprives the plaintiffs and each of them of their property and property rights without
[fol. 4013] due process of law," in violation of the Fourteenth Amendment (Abst. 36). The petition also set out the rate reduction order in full, which order on its face is based on the written and paid method (Abst. 30), and alleges that if said order were enforced the companies would thereby be deprived of their property without due process of law, contrary to the fourteenth Amendment (Abst. 34-35).

Therefore, the foregoing (as well as the other) constitutional points were raised by the respondents timely, and are live questions in this case.

VI

As to the Property Owned by the Respondents in the State of Missouri

It is asserted by the appellant in his reply brief (p. 31) that "these companies own no physical property in the state." Appellant inferentially argues from this misstatement that the insurance companies (having no property in the state) could not be deprived of property by the rate reduction order.

But the evidence shows that the insurance companies have valuable property in this state. They own agency plants in the state, which plants have been built up by the companies at great cost and expense, and which are of very substantial value, the value of the agency plants of each company being substantially 25% of the amount of unearned premium of such company (Abst. 2712-2714, 2765, 1256-[fol. 4014] 1257, 2242-2243). In his brief before the referee the appellant concedes this to be so, and at page 218 of his said brief appellant calculates the value of said agency plants at $4,265,302.

It will hardly do to say, therefore, that "these companies own no physical property in the state."

These agency plants have an element of value, and are property within the law. In Denver v. Denver Water Company, 246 U. S. 178, the Supreme Court said:

"That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right and should be considered in determining the value of the property, upon which the owner has a right to make a fair return, where the same is privately owned, though dedicated to a public use."

The unconstitutional reduction order of the Superintendent of Insurance, if enforced, would result in compelling the respondent companies to either withdraw from the State of Missouri, and thereby lose their property (agency plants), or continue to write insurance in the State of Missouri at greater loss. In either event they would be deprived of their property without due process of law.

[fol. 4015] And thereafter, to wit, on May 21, 1926, the following further proceedings were had and entered of record in said cause:

IN SUPREME COURT OF MISSOURI

No. 26,187

"AETNA INSURANCE COMPANY, AGRICULTURAL INSURANCE Company, Alliance Insurance Company of Philadelphia, American Alliance Insurance Company, American Central Insurance Company, American Eagle Fire Insurance Company, American Insurance Company, of Newark, Assurance Company of America, Atlas Assurance Company, Automobile Insurance Company, Abeille Fire Insurance Company of Paris, Boston Insurance Company, Bristish America Assurance Company, British General Insurance Co. of London, Eng., Buffalo Insurance Company, Bankers & Shippers Fire Insurance Company, California Insurance Company, Caledonian Insurance Company, Camden Fire Insurance Association, Century Insurance Company, Ltd., Citizens Insurance Company, City of New York Insurance Company, Central States Fire Insurance Company, Cleveland National Fire Insurance Company, Colonial Assurance Company, Columbia Insurance Company, Commercial Union Assurance Company, Ltd., Commercial Union Fire Insurance Company, Commonwealth Insurance Company of New York, Concordia Fire Insurance Company, Connecticut Fire Insurance Company, Continental Insurance Company, County Fire Insurance Company, Detroit Fire & Marine Insurance Company, Dubuque Fire & Marine Insurance Company, Eagle Star & British Dominions Insurance Company, Ltd., Employers Fire Insurance Company, Equitable Fire & Marine Insurance Company, Federal Insurance Company, Fidelity-Phenix Fire Insurance Company, Fire Association of Philadelphia, Firemen's Fund Insurance Company, Firemen's Insurance Company of Newark, N. J., Franklin Fire Insurance Company, General Fire Assurance Company, Girard Fire & Marine Insurance Company, Glens Falls Insurance Company, Globe & Rutgers Fire Insurance Company, Granite State Fire Insurance Company, Great American Insur-

ance Company, Great Lakes Insurance Company, Hanover Fire Insurance Company, Hartford Fire Insurance Company, Home Insurance Company, Home Fire & Marine Insurance Company, Guaranty Fire Assurance Corporation, Imperial Assurance Company, Insurance Company of North America, Insurance Company State of Pennsylvania, Importers & Exporters Insurance Company, Liverpool & London & Globe Insurance Company, London Assurance Corporation, Chicago Fire and Marine Insurance Company, Excelsior Insurance Company, Union Marine Insurance Company, Limited, Equity Fire Insurance Company, Liberty Fire [fol. 4016] Insurance Company, America Union Insurance Company, East & West Insurance Company, The Eagle Fire Company, London & Lancashire Fire Insurance Company, Ltd., London & Scottish Assurance Corporation, Ltd., Law Union & Rock Insurance Co., Ltd., Maryland Motor Car Insurance Company, Marine Insurance Company, Ltd., Marquette National Fire Insurance Company, Massachusetts Fire & Marine Insurance Company, Mechanic Insurance Company of Philadelphia, Mechanics & Traders Insurance Company, Mercantile Insurance Company of America, Merchants Fire Assurance Corporation, Michigan Fire & Marine Insurance Company, Milwaukee Mechanics Insurance Company, Minneapolis Fire & Marine Insurance Company National Ben Franklin Fire Insurance Company, National Fire Insurance Company of Hartford, National Liberty Insurance Company of America, National Union Fire Insurance Company, Nationale Insurance Company of Paris, Netcherlands Fire & Life Insurance Co. of the Hague, Newark Fire Insurance Company, New Brunswick Fire Insurance Company, New Hampshire Fire Insurance Company, New Jersey Insurance Company of New Jersey, Niagara Fire Insurance Company, North British & Mercantile Insurance Company, North River Insurance Company, Northern Assurance Company, Ltd., Northern Insurance Company, Northwestern National Insurance Co., Norwich Union Fire Insurance Society, Ltd., Old Colony Insurance Company, Orient Insurance Company, Pacific Fire Insurance Company, Palatine Insurance Company, Ltd., Patriotic Assurance Company, Ltd., Pennsylvania Fire

Insurance Company, Phenix Fire Insurance Company of Paris, Phoenix Assurance Company, Ltd., Phoenix Insurance Company of Hartford, Providence-Washington Insurance Company, Queen Insurance Company, Reliance Insurance Company of Philadelphia, Rhode Island Insurance Company, Royal Exchange Assurance Company, Ltd., Royal Insurance Company, Ltd., Safeguard Insurance Company, Scottish Union & National Insurance, Security Insurance Company of New Haven, Springfield Fire & Marine Insurance Company, St. Paul Fire & Marine Insurance Company, Standard Fire Insurance Company, Standard Fire Insurance Company of New Jersey, State Assurance Company, Sterling Fire Insurance Company, Stuyvesant Fire Insurance Company, Sun Insurance Office of London, Svea Fire & Life Insurance Company, Star Insurance Company of America, Tokio Fire & Marine Insurance Company, Union Assurance Society, Ltd., Union Fire Insurance Company of Paris, United States Fire Insurance Company, United States Merchants & Shippers Insurance Company, Urbaine Fire Insurance Company, Union [fol. 4017] Insurance Society of Canton, Ltd., Western Assurance Company, United Firemen's Insurance Company, Victory Insurance Company of Philadelphia, Fidelity Union Fire Insurance Company, Great Western Fire Insurance Company, Indemnity Mutual Marine Assurance Company, London & Provincial Marine & General Insurance Company, National Security Fire Insurance Company, Omaha Liberty Fire Insurance Company, Potomac Insurance Company of the District of Columbia, Superior Fire Insurance Company, Independence Insurance Company, Henry Clay Fire Insurance Company, Philadelphia Fire and Marine Insurance Company, Merchants Insurance Company, Carolina Insurance Company, Twin City Fire Insurance Company, Westchester Fire Insurance Company, Yorkshire

Insurance Company, Hudson Insurance Company, respondents,

v.

Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, Appellant.

Appeal from the Circuit Court of Cole County

Judgment—Entered May 21, 1926

"Now at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Cole County rendered be reversed, annulled, and for naught held and esteemed, and that the said appellant be restored to all things which he has lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be, and the same is hereby, dismissed, and that the said appellant recover against the said respondent his costs and charges herein expended and have execution therefor. (Opinion filed.)

Which said opinion is in words and figures, as follows:

[fol. 4018] In the Supreme Court of Missouri

[Title omitted]

Opinion, White, J.—Filed May 21, 1926

The defendant, Superintendent of the Insurance Department of the State of Missouri, on October 9, 1922, promulgated under Section 6283, Revised Statutes 1919, an order reducing certain insurance rates in the State ten per cent. One hundred and sixty stock fire insurance companies doing business in the State filed their petition in this case November 10, 1922, in the Circuit Court of Cole County, praying the court to review the findings and order of the commissioner and set it aside.

The order made by the superintendent recites that a similar reduction order was made in January, 1922. It was followed by an injunction suit filed by certain insurance companies. This order was later set aside, the injunction suit dismissed, and a stipulation entered into between insurance companies and the superintendent which provided for the production before the superintendent of such evidence as he might require and such as the companies might see fit to bring bearing upon the question of reduction. The order recites further that, notwithstanding his request, the insurance companies refused to furnish the information agreed upon. The order, so much as is important for our purpose, then proceeds as follows:

"I have made a full and complete investigation, as provided for by law, of the underwriting experience of the [fol. 4019] stock companies referred to with respect to the business transacted by them in the State of Missouri during the years 1917, 1918, 1919, 1920 and 1921. Such investigation is based upon the sworn statements filed with the Insurance Department during said years by said companies as required by law and from such other information as has been available. Such investigation shows that the aggregate profits of said companies upon their Missouri business during said period is in excess of what is reasonable.

"During said five years, said stock companies collected on Missouri business net premiums amounting to $81,067,318.

"During the same period the interest on the capital and surplus of said companies, prorated to Missouri, amounted to $2,801,660 and during the same period the interest on unearned premium reserves, on Missouri business, amounted to $2,418,596. This means a total income on Missouri business during said five-year period of $86,287,574.

"During the same period these companies paid losses in Missouri, $45,066,124. It is the opinion of this department that these losses were unnecessarily large because of over-insurance and lack of adequate inspection.

"This makes a difference of $41,221,450 between the total amount collected and the amount paid in losses. This item, $41,221,450 represents the amount left for profits and ex-

penses, as shown by the reports of the companies, and is 47.77 per cent of the total income as reported. The above amount, $41,221,450 is made up of expenses $32,534,617, and profits $8,686,833, according to the reports of the companies. I find that this expense item is excessive; and that a proper and reasonably economical administration of the business will result in greatly increased profits even under [fol. 4042] lower premium rates. In other words, there is a large potential or unrevealed profit in the excessive expenses.

"I find that these excessive expenses are largely the result of the following causes: 1. Certain excessive and discriminating commissions paid. 2. Expenses of marine and inland business unjustly and illegally apportioned to Missouri. 3. Unfair and improper allocation of over-head expenses. 4. Improper charge of income and excess profit taxes. These items amount in the aggregate to not less than $5,000,000. It is my opinion and find that a percentage of 47.77 per cent for profits and expenses is unreasonable and excessive. It is my duty, therefore, to make such order as the law permits me to make; that is, a reduction of rate, leaving it to the companies to adjust the expenses accordingly and to reduce the losses through proper inspection and the elimination of over-insurance.

"An additional reason for reduction in rate at this time arises from the fact that an increase in rate authorized in January, 1920, had not at the close of 1921 been fully applied. The full application of this increase which, unless modified, will be the authorized rate, will result during 1922 and the years following in an increase of the premiums now charged of approximately eight per cent.

"Therefore, I find that the present rates are excessive and that they produce as hereinbefore stated profits to the companies in excess of what is reasonable, and I further find that a reduction of ten per cent in the present rates will result in profits that are reasonable. Accordingly you and each of you are hereby notified that I have this day ordered a reduction of ten per cent in the rates now charged by the aforesaid companies on fire, lightning, hail and wind- [fol. 4021] storm insurance business written in the State of Missouri, which reduction, in my judgment, will still leave said companies a reasonable profit after giving proper

3005

and reasonable consideration to the conflagration liability both within and without the State.

"The aforesaid reduction order shall take effect and be in operation on and after the 15th day of November, 1922, and shall be applied subject to the approval of the Superintendent of Insurance. If the companies do not within thirty days from this order of reduction submit a class or classes which meets the approval of the Superintendent of Insurance, the superintendent will designate the class or classes to which the reduction shall apply.

"Ben C. Hyde, Superintendent of Insurance."

At the outset, counsel for plaintiffs and defendant disagreed as to the scope of the inquiry before the trial court. Counsel for defendant contended that the court was limited to the facts before the superintendent upon which he made the order, under the language of Section 6284, Revised Statutes 1919, which provides that the order of the superintendent "shall be reviewable" by proper action in the circuit court. Whereas, the plaintiffs' counsel maintained that the language following that just quoted, "and upon such review the entire matter shall be treated and determined de novo," required the circuit court to try the case and introduce any evidence that might be pertinent to the inquiry regardless of what facts were before the superintendent, including his action in making the order.

On a stipulation of the parties the case was referred and Honorable John I. Williamson was appointed referee. He held that the case was triable de novo in accordance with the theory advanced by the plaintiffs and took voluminous [fol. 4022] evidence in Chicago, New York and Missouri, to ascertain whether, during the five year test period under examination, 1917 to 1921, the insurance companies doing business in the State of Missouri, affected by the order, made more than a reasonable profit. The plaintiffs claimed that during the test of the five year period, 1917 to 1921 inclusive, the insurance companies in their underwriting business in the State of Missouri suffered a large loss. The referee, after several months of investigation, determined all the essential facts in favor of the plaintiffs and against the defendant, the superintendent. The trial court approved the findings of the referee and entered judgment

on December 22, 1924, canceling the order made by the superintendent. From that judgment he appealed. The effect of the statute under which the superintendent acted and the court reviewed his order, will be considered more fully below.

It was demonstrated that the reports upon which the Superintendent of Insurance reached his conclusion and ordered the reduction, were incorrect in many respects, although those reports were sworn to by the several companies and filed, as the statute requires, in his department, for the purpose of furnishing him the information upon which he might act in such case. Errors were pointed out in the reported premiums and expenses, duplications were shown; on the whole the reports were shown to be entirely untrustworthy.

It must be noted that the defendant in this case was entirely dependent upon the information furnished by the plaintiffs. They made their own figures, explained their methods of bookkeeping on their own theories and furnished the facts to the refere according to their theory of what the facts showed.

The claim of the plaintiffs is based upon their summary and conclusion from the figures produced of the underwriting business done in Missouri during the years 1917 to 1921 as follows:

[fol. 4023] Earned Premiums		$74,813,816
Incurred Losses	$48,593,664	
Incurred Expenses	33,230,352	
Incurred losses and expenses combined		81,824,016
Underwriting loss (9% of earned premiums)		$7,010,200

The defendant's claim is as follows:

Premiums 5 years, 1917-1921		$83,502,181
Add amount of increase of 1920		7,693,045
Total premiums including increase		$91,195,226
Interest on unearned premium	$2,301,132	
Interest on capital and surplus	1,914,940	
Total investment profit		4,216,072
Total receipts		$95,411,298
Losses and expenses reported	$80,161,057	
Deduct excess commissions paid in St. Louis	$2,496,715	
Deduct federal taxes	1,171,119	
	3,667,834	
Actual losses and expenses		76,493,223
Net profit		$18,918,075
Deduct amount of reduction, 8.6% of premiums of $91,195,226		7,842,789
Net profit after reduction of 10%		$11,075,286

The premiums in the first item mean collected premiums, as distinguished from earned premiums, mentioned in plaintiffs' tabulation.

The increase of $7,693,045 refers to what the additional earnings would have been if the order of 1920 increasing the rates fifteen per cent had been in full effect during the five years. That increase is mentioned in the reduction order as one reason for making the reduction complained of.

Thus, it is the plaintiffs' claim, taking them all together, that they lost more than seven million dollars in the underwriting business in Missouri during the five-year test [fol. 4024] period, while the defendant's figures show they gained a very large net profit and, taking into consideration a previous increase of rates in 1920, the profit would have been more than eleven million dollars if the reduction and the increase had been in full effect. These differences do not arise from different figures and tabulations. There seems to be no dispute as to specific facts. The contest

arises upon a different interpretation by the respective parties of the facts produced. The items of the respective accounts set out above illustrate their different theories. The facts and figures all come from the plaintiffs.

1. The statutes under which the superintendent acted and the circuit court reviewed the action, Sections 6283 and 6284, Revised Statutes 1919, appear in the rating act of 1915, which was agreed upon, it is said, by the insurance companies and the State Insurance Department and enacted for the purpose of relieving the companies from the embarrassment of the anti-trust laws. Those sections are as follows:

"Sec. 6283. Superintendent to Investigate the Reasonableness of Rates—Authority to Order Reductions.—The superintendent of insurance, upon written complaint of any citizen, or upon his own motion, is hereby empowered to investigate the necessity for a reduction of rates, and if, upon such investigation, it appears that the result of the earnings in this State of the stock fire insurance companies for five years next preceding such investigation shows there has been an aggregate profit therein in excess of what is reasonable, he shall order such reduction of rates as shall be necessary to limit the aggregate collections by insurance companies in this State to not more than a reasonable profit. Any reduction ordered by the superintendent of insurance shall be applied, subject to his approval: Provided, that the [fol. 4025] superintendent of insurance shall designate the class or classes to which the reduction shall be applied if the companies do not, within thirty days from the order of reduction, submit a class or classes which meet his approval. In determining the question of rates and profits in accordance with this article, the superintendent of insurance shall give proper and reasonable consideration to the conflagration liability, both within and without the State.

"Sec. 6284. Order of Superintendent Reviewable by Court Action.—The orders and directions of the superintendent of insurance together with his findings or determinations of facts upon which such order or determination is founded, shall be reviewable by a proper action in the

courts, and upon such review the entire matter shall be treated and determined de novo, but the burden of proof as to the unreasonableness or the injustice of any order made by the superintendent of insurance shall rest upon the party or company appealing from any such order. During the pendency of such action or review each insurance company or other insurer shall not charge any rate or premium in excess of that fixed by the superintendent of insurance."

In 1923 the Legislature amended those sections. The essential part of the amendment to Section 6283 is as follows: "He shall order such reduction of rates as will, in his opinion, produce a fair and reasonable profit only. He shall also take into consideration the acquisition cost and administration expense of such companies, and all earnings of such companies, including investment profits. He shall also consider whether or not the underwriting activities of such companies are conducted on a reasonably economical basis, and whether or not their investments have been and are being made in a safe and reasonable manner, it being [fol 4626] the intention of this section to provide that policyholders shall not be charged rates which will cover losses occasioned by extravagant methods or unsafe or speculative investment of funds."

The essential part of the amendment to Section 6284 is as follows: "The court shall have authority to sustain, set aside or modify the orders and directions under review."

The plaintiffs contend that the Act of 1923 is not applicable to this case because the act went into effect in June, 1923, long after the order of the superintendent was made. The referee held that those provisions in the Act of 1923 set out above only related to the remedy, did not affect any vested right, and therefore were applicable to the case in hand.

No doubt the referee was right in his statement of the law. A new enactment which only affects the remedy, has no effect upon vested rights, does not impair the obligation of contracts and may control in the decision of a case. (Gladney v. Syndor, 172 Mo. l. c. 324; Clark v. Railroad, 219 Mo. l. c. 533.) Such an act does not offend against the constitutional restriction that no law retrospective in its operation can be passed by the General Assembly. (Sec. 15, Art. II, Mo. Const.) But the referee apparently over-

looked the fact that the act did not go into effect until June, 1923, nearly a year after the reduction order was made; the Superintendent of Insurance could only consider such facts and make such determinations as the law then in effect allowed him. The trial court under Section 6284 was authorized to review the order "and upon such review the entire matter shall be treated and determined de novo." That cannot be construed to mean that the trial court could make a new order in lieu of the one made by the superintendent. It was limited to a review of the order made, and to such evidence as might have been produced before the superintendent. It must determine the case upon the facts as they existed then.

[fol. 4027] The provision quoted above, amending Section 6284, "the court shall have authority to sustain, set aside and modify the orders and directions under review," does not relate to the action of the superintendent but the action of the trial court reviewing it. The Act of 1923 was in effect when the evidence was taken and when the judgment was rendered in the trial court.

The referee was correct in holding that the trial court was not limited to an investigation of the facts which the superintendent had before him, but could take into consideration any evidence produced by either party which would throw light upon the propriety of the order at the time it was made.

II. The statute, Section 6283, requires the superintendent to order a reduction so as to limit the aggregate collections of the insurance companies "to not more than a reasonable profit." A reasonable profit, it seems to be agreed, is five per cent on the underwriting business done, with three per cent addition for conflagration hazard. The difference between the State and the plaintiffs arises in the method of ascertaining the amount of the profit realized on the business. In that respect they differ radically on a number of items, which appear on the respective claims noted above, and which will be considered in their order.

The plaintiffs assure us that the insurance companies preserve a clear line of separation between their underwriting activities and the investment activities; that their returns and profits from their investments should not be considered as profits for rate-making purposes, but the only thing to

be considered is the underwriting business done and the profits arising from that. The law relating to public service corporations contains features unlike anything in the rating act for insurance companies. The public service corporations are regulated in a way to insure them a reasonable return on their capital invested after defraying expenses. Often they are monopolies having no substantial [fol. 4028] competition. Insurance companies always have active competition among each other. The rating act was intended to remove the temptation to pool in violation of the anti-trust laws and to prevent ruinous competition. The statute contemplates that the rates shall be fixed with a view to the aggregate earnings and profits for the insurance business in the State. Each company may make as much money as it can. Some may make enormous profits, some may do a losing business, but the average profit, that is, the aggregate profit on the aggregate business, must be reasonable. That seems to be sufficient reason for taking the business done and not the capital invested, as a basis for measuring a reasonable profit.

The plaintiffs claim that the expense incurred in the State do not include expenses of their investment business, but only expenses actually incurred in the underwriting business. That is not true because the items of investment profit mentioned in defendant's tabulation above are the net earnings after the expenses are paid. It is exactly the same as if the total investment earnings were stated and the expense subtracted. But they ask for no return from the underwriting business on their investment funds. Therefore we do not allow defendant's claim of $1,914,940 profit on capital and surplus, as a part of the Missouri profits for rate-making purposes.

The evidence showed that the companies made enormous profits during the period under investigation and paid large dividends. We cannot avoid noting that the government, State and municipal bonds and other safe securities which the law requires insurance companies doing business in the State to invest their capital in, bear low rates of interest. They are the safest, though the least remunerative, methods of investment. Yet the plaintiffs insist that, notwithstanding the large aggregate profits of the companies, their underwriting business results in a serious loss, and these

profits occur notwithstanding such loss. They claim that [fol. 4029] the large profits are due to the investment branch of the business. We are inclined to think that the conclusion thus reached is a triumph of bookkeeping skill rather than a scientific elucidation of the actual facts.

Of course we are not concerned about how much profit the plaintiffs make on their investments, but the figures given below are important in determining their underwriting profits. A large number of exhibits with a great mass of figures are in evidence. A few of these may assist in understanding the discussion of the items to follow.

The capital apportioned to Missouri during the five-year period was $17,816,887, and the surplus was $36,842,320, a total of $54,659,107. The investment profit on this was $1,914,940 as stated. These figures show the added capital and surplus for the five years, and the profit for that time. To obtain the average sum in actual use and the returns on it, these totals must be divided by five. The total profit is the same as would be realized on the total investment for the year. It figures about three and a half per cent per annum. We are not to suppose that the companies made a larger profit on their general investment business; the above sums were apportioned to Missouri, on the State's percentage of the general business, investments and profits in the same proportion. Some of the exhibits show the character of their investments, stocks, bonds, real estate loans and the like. None of them indicate speculative risks on which large returns might be expected, to account for large profits. So far as Missouri is concerned the plaintiffs show a great loss for five years, taking into consideration all their business, investment and underwriting. We are not pointed to any evidence where this loss was made up in other states, by higher insurance rates than were paid here. There was evidence of enormous conflagration losses, prior to the test period, 1917-1921. How can we account for the extraordinary profits?

[fol. 4029a] Taking all the business everywhere of all the companies for the five years, we have:

Total capital	$615,630,115
Total contributed surplus	14,155,423
Capital and contributed surplus	$629,685,538
Total earned surplus	$1,258,329,906
Grand total	$1,888,015,444

Thus it will be seen that the contributed surplus, the surplus paid in by the stockholders, was insignificant, while the earned surplus was more than double all sums paid in by stockholders, both capital and contributed surplus. So the insurance companies must have been quite prosperous before the test period began, notwithstanding conflagration losses. At the low rate of investment earnings, it would take a long time for the money paid in to increase that much. We have not consulted interest tables, but no doubt taking account of periods when funds must be idle, thirty or forty years must elapse before a sum invested at three and a half per cent, compounded, can triple itself; even if no dividends were paid from the increase. It is incredible that the large profits could come from investments.

The above figures are cumulative. To get the average for five years they must be divided by five.

The capital and contributed surplus in 1917 was $109,813,161, and in 1921 it was $149,003,201, while the average for the five years was $125,937,107.

In 1921 the earned surplus was	$293,845,008
In 1917 it was	197,903,541
Gain in five years	$95,941,467

Thus while the large earned surplus showed prosperity before 1917, it showed equal prosperity during the five-year period by adding $95,941,467 to the investment funds. During the five years the company paid $110,142,849 in dividends.

[fol. 4030] Thus the gain was

Earned surplus	$95,941,467
Dividends	110,142,849
Total	$206,084,316

Divide that sum by five and we have $41,216,863, the average annual net profit.

Tht total capital and contributed surplus during the period was $629,685,538, with an annual average of $125,937,107. So the profit was nearly thirty per cent on that. Add the earned surplus and the whole investment sum available during the period was $1,888,015,444. Divided by five, $377,603,088, the average for the five years. The average increase of $41,216,863 was approximately eleven per cent per annum. This accounts for the ability of the companies to pay large dividends on the money actually invested and at the same time annually lay up a surplus to augment their investment funds.

The total capital and surplus in 1921 was $442,848,209; in 1917, $307,716,702, an increase of $135,131,507. Of this about $40,000,000, as noted above, was increased capital, probably due to the formation of new companies, whose capital did not earn much at first. The greater part of the new capital was added in the last two years. So that the total earnings appearing in dividends and earned surplus, $206,084,316, as shown above, was almost wholly from the $307,716,705 on hand in 1917, approximately sixty-seven per cent, or about twelve and a half per cent per annum.

While a large part of this profit must have come from the underwriting side of the business, it does not tell the whole story and does not account for all the profits. We find it difficult to reconcile that moderately large profit with the following figures.

The total underwriting profit of all the companies during the five years was $409,944,558. The investment profit was $138,253,522. Total, $548,198,080.

[fol. 4031] As shown above, the cumulative capital and surplus for the five years was $1,888,015,444, an average of $377,603,089 a year, of which the contributed capital and surplus averaged $125,937,107. Thus the earnings for the five years was nearly four and a half times the money originally invested by the stockholders, and nearly one and a half times, or one hundred and fifty per cent, of the capital, paid surplus and earned surplus combined. This is more than eighty per cent per annum on the original investment, and 29.03 per cent per annum on the investment accumulated earned surplus. Of this 29.03 per cent, 7.32 per

cent was due to investment earnings and 21.71 per cent was due to underwriting earnings, as shown by the tabulations in the exhibits. Thus about three-fourths of all the earnings of the plaintiffs were underwriting earnings.

Was any business ever so generally prosperous? The plaintiffs, by this showing, every five years can quadruple their original investment, or double their total accumulations, and at the same time pay as dividends ten per cent per annum. Three-fourths of this is due to the underwriting business, as they count it, notwithstanding the enormous losses in that branch of the business in Missouri. Yet as we will show, more than half of the stated investment earnings are directly due to the underwriting business. Are we to believe that rates are so much higher in other states than here, notwithstanding many of them have rating acts, that this enormous profit can thus be accounted for? The evidence does not show any such condition. On the contrary, by the method of ascertaining profits and losses, which the respondents seek to apply to this case, the companies during the last twenty years have made an underwriting profit of less than one per cent. This in the teeth of the undisputed figures that the underwriting profit has resulted in the enormous gains shown above. Thus the, to us, unexplored mysteries of bookkeeping present the problems to be solved.

[fol. 4032] It may be noted that the income on the capital and surplus is 7.32 per cent per annum, about double the 3½ per cent profit on those items in Missouri. In fact, the total invested funds is more than double the capital and surplus to invest. The bonds, stocks, loans, etc., for the period were $4,156,861,763, while the total capital and surplus was $1,888,015,444, or a little over 45 per cent of the total. We account for that in this way: There is always on hand a large sum in unearned premiums. It averages more than all the capital and surplus combined, and is invested in the same safe way that the capital is invested. The companies keep invested, bearing interest all the time, five or six times as much money as their stockholders ever paid in as capital and surplus. This is illustrated in the part allocated to Missouri, as shown in defendant's claim above:

Interest on unearned premium	$2,301,132
Interest on capital and surplus	1,914,940
Total investment earnings	$4,216,072

Thus the unearned premiums amount to more and earn more profit than all the invested capital and surplus. In truth they occupy so large a space in the argument and are so important in determining what are underwriting profits, that we must next consider the respective claims in regard to them.

III. The difference in method appears in consideration of the premiums. The plaintiffs insist that unearned premiums shall not be considered at all in estimating the underwriting profits, that the way to estimate the profits which accrued during the test period is to take the earned premiums and deduct the losses and expenses incurred. The State insists that the proper method is to take the premiums collected and subtract the losses and expenses paid in order to ascertain the profit. This necessitates an inquiry as to what unearned premiums are and their effect.

Unearned premium is that portion of a premium paid which must be returned to the insured on the cancellation of the policy and is in direct proportion to the unexpired time during which the policy is to run. They are paid in [fol. 4033] advance for service to be thereafter rendered. That is, it is what a company must repay when it cancels a policy. As we understand it, it is not the short rate payment which the insured receives when he desires to cancel the policy. The fundamental error of the plaintiffs' method appears in several ways. Judge Ragland has written so clearly on that subject that we quote from his opinion as follows:

"As heretofore stated it is the contention of the companies that the earnings of a given period on which underwriting profit can be predicated are determined by deducting from the premiums earned during that time the losses and expenses incurred. The method employed for ascertaining the amount of premiums earned is this: Add the unearned premiums at the beginning of the period to the aggregate net premiums received during that time and

deduct from the sum the premiums unearned at the end of the period. Incurred losses and expenses are arrived at in this way: Subtract the outstanding incurred losses and expenses at the beginning of the period from the losses and expenses paid during that time and then add the losses and expenses unpaid and outstanding at the end of the period. According to the method of determining earnings just outlined respondents lost during the period in question in their underwriting business $7,010,200. During the entire period their business was steadily expanding, the rate of increase being pronounced. As a consequence the figure indicating unearned premium at the end of the period was much larger than the one representing unearned premium at the beginning. Had those figures been transposed, that is, if the larger one had represented the unearned premiums at the beginning of the period and the smaller one the unearned premiums at its close, according to the method of computing earnings just described the companies would [fol. 4034] have had an underwriting profit of more than $9,000,000. To express it differently: when the companies are prosperous and increasing the volume of their business, according to this method of computing earnings, they are losing money; when their underwriting is falling off they are piling up profit. It should not be forgotten that 'unearned premium' is but an arbitrary measure of contingent liability. Such liability while it necessarily increases with an expanding business is by no means a true exponent of underwriting earnings. An insurance accountant of many years' experience, testifying for respondents stated that while the fire insurance business had been rapidly increasing in volume during the last twenty years, the companies according to the method of computing earnings which they now invoke had during the whole of that time made an underwriting profit of less than one per cent. It was the witness' theory that the huge surpluses which they have managed to accumulate during that time resulted from investment earnings, but it is unbelievable that corporations so organized for profit would have continued for such length of time to hazard their capital in the business of underwriting if that business in fact yielded no profit. The method of determining profit which respondents seek to have applied is clearly unsound.

"In their bookkeeping the companies at the close of each year strike what their accountants term a trade balance. This balance is derived by deducting from the aggregate net premiums received during the year the total losses and expenses paid during that time. The net premiums consist of all premiums received less the pro rata returned upon cancellation and sums paid for reinsurance. When a loss occurs an estimate of the amount is entered upon the books as an 'incurred loss.' When the loss is subse- [fol. 4035] quently adjusted it is paid. The amount paid is frequently reduced by salvage or recoverable reinsurance. But losses regardless of when they occurred are paid out of current premium receipts. The distinction between incurred expenses and paid expenses is negligible. All expenses with the exception of taxes are ordinarily paid within the year in which they are incurred.

"The annual trade balance of a company engaged in a continuing business, being the difference between its receipts on the one hand and its expenditures on the other, during the preceding year, must necessarily reflect with a fair degree of accuracy its earnings for that period. To be sure such balance would not be indicative of solvency as heretofore defined, nor would it properly represent net earnings if the distribution of assets upon dissolution were involved, but nevertheless it cannot be gainsaid that it does in fact constitute the clear earnings of the period embraced, if that period be considered a part from those which preceded it and those which follow, as is the case where a basis for rate regulation under the statute is sought.

"Based on the conclusions reached in the preceding paragraphs we are of the opinion that the 'aggregate amount of * * * premiums, losses and expenses for or on account of business within this State * * * for * * * five years next preceding' intended by the Legislature were the aggregate net premiums received and the losses and expenses paid during the five year period. That is the construction which has been placed upon the statute by the insurance department of the State at all times since its enactment, and the construction which the plaintiff companies themselves have heretofore acquiesced in and acted upon in their application for increase of rates. The stand now [fol. 4036] taken by them has the appearance therefore of

having been contrived by ingenious counsel, or by possibly more ingenious insurance accountants, for the purposes of this case."

The cost of procuring insurance is approximately forty per cent of the premium paid. Now what happens? At the end of the test period all unearned premiums are deducted, that is, they are not counted as a part of the resources of the company accumulated during the test period. But the forty per cent cost of procuring it is deducted. Thus the plaintiffs very naturally say that an unearned premium is a liability instead of an asset. It certainly is, the way they figure it. Yet they have collected the unearned premiums, they have the cash in hand, the cost of procuring it has been paid or incurred, and it is subjected only to the hazard of future losses, and possibly occasional cancellation. At the end of the period under consideration the unearned premium in the hands of all the companies amounted to $17,061,289. That was subtracted because not yet earned. But, the cost of procuring it was also subtracted. That is, the gain on that much business could not be considered, but the expenses of it could be considered.

Suppose on the last day of the test period the several companies had written insurance on which the premiums were $100,000. That might easily be done because they wrote nearly $20,000,000 worth in premiums during that year, being considerably over a million and a half per month. The cost of producing that, approximately forty per cent, would be $40,000. Not one dollar of those premiums could be counted as an asset in the profits, but the $40,000 cost must be deducted as an expense on other business done. Thus, if that $100,000 worth of insurance had been transacted the next day, it would have been a difference of $40,000 in favor of the State.

They say that an unearned premium is worthless, yet they invest large capital in the business, spend a lot of [fol. 4037] money in equipment for transacting the business and incur enormous expense in procuring and producing that unearned premium. Every premium on every risk that is written is unearned the moment the contract is entered into. Their entire business is conducted for the purpose of acquiring unearned premiums and nothing else. Unearned premiums are the total result of the whole underwriting

business, and yet they say they are worthless. Even a person with no bookkeeping experience would say that if this money which an insurance company has acquired in its business is not to be counted among the assets, certainly the expense of producing it ought not to be counted against the other business to be considered in the test. Their own figures show that the probable losses exceeded little or no more than fifty-five per cent of the premiums received.

These unearned premiums then are at least worth forty-five per cent of their face, but the probable losses have already been deducted on other losses occurring during the test period. Something is said in the evidence about the Richard method of figuring underwriting profits. Instead of charging off all unearned premiums, Richard estimated that the probable losses to be paid on the risks represented by those premiums would be fifty-five per cent, thus estimating the unearned premiums to be worth forty-five per cent of their face, and he added that proportion as a part of the earnings. That at least is more just than the method adopted by the plaintiffs, who discard unearned premiums altogether. But even that is wrong, because it does not take account of the fact that losses occurring during the test period have been paid on policies written before the test period.

The companies argue that the solvency test must be applied. That is, the premiums must be valued only at what the company should realize on them in case it should cancel all the policies. The solvency test is no test at all. The assets of a going concern are never of the same value as the [fol. 4038] same assets would possess in the case of a forced liquidation. The companies do not have to cancel the policies, it is not to their interest to cancel them, and there is not a remote possibility that they would cancel them. The possibility that the insured would cancel their policies is so remote as to be negligible. The respondents have put forward a very convincing argument on another branch of the case that in estimating results in this case we should not consider mere possibilities nor resort to conjectures. That reasoning should be applied here.

The referee, in holding with the plaintiffs in that matter, says that method of arriving at the earnings is not satisfactory. It is not only unsatisfactory, it is utterly inde-

fensible. Any method which makes an asset a liability, turns a profit into a loss, shows a profitable business to be a losing business and writes enormous gains for a long period off the books, cannot be correct on any principle.

It is said that, taking the whole life of an insurance company, that method would "wash out" in the end. It could never "wash out." Take any period during the life of a company, whether long or short, it would not be correct.

It has been shown that the five-year period is not correct. For a twenty-year period it was false. A one-year period would not turn out correctly and at the end of a fifty-year franchise it would not be correct because the company would have been profiting by the error all through its life, and at the end of the period there would still be unearned premiums which would have to be liquidated in some manner.

The $17,000,000 of unearned premiums remaining at the end of the test period here is not counted as an asset, but the cost of producing it, nearly $7,000,000, is deducted from the assets. That is offset to some extent by the unearned premiums added at the beginning of the period, amounting to about half as much as the unearned premiums subtracted at the end. The former may be balanced against the latter, and that would still leave in the neighborhood [fol. 4039] of three and a half million dollars deducted as an expense at the end of the period without any reason for it whatever.

The referee says the weight of the evidence shows that the method adopted by the plaintiffs is the correct one. Undoubtedly; since the respondents had to produce the evidence, they put forward the most skilled accountants in the country to swear that such was the way their several companies kept their books for rate making purposes. It seems to us that the method is supported by the weight of expert skill in managing statistics, skill in summoning phantoms and in making realities vanish.

The method for ascertaining profits contended for by the State is to take the premiums actually received and subtract the losses and expenses paid during the test period. The companies themselves have approved the method. If it is faulty they cannot complain because their accounts afford no other way. It is the way other lines of business

estimate their profits. The five-year period is taken by the Legislature, presumably on the theory that the period will fairly reflect the character of business done during the entire life of the corporation, at least of the aggregate business of all the companies.

IV. The State claims and the insurance companies deny that interest on unearned premiums should be accounted for as part of the underwriting earnings of the companies. This amounted in Missouri during the test period to $2,301,132. That is the sum stated by the defendant's counsel and is somewhat smaller than the sum mentioned by the referee, but the difference is not important. It is greater, as noted in Paragraph II, than the interest on capital and surplus.

The referee quite lucidly discussed this subject. He pointed out that insurance companies have for investment their capital stock; their surplus; their underwriting receipts, and receipts from investments on these various funds. He then made this comment: "As to earnings aris- [fol. 4040] ing from the investment of underwriting earnings it is to be remembered that these underwriting profits or earnings are the net fruit to the insurance companies of their underwriting activities." He said further of the unearned premiums: "This money is paid in advance by the policyholders and until it becomes earned premiums or is refunded because of cancellations, it is required to be held by the companies in large part as a reserve fund. This fund is not available for distribution in the form of dividends, and in a sense is held by the insurance companies in trust for the policyholders. It does not belong to the policyholders, it is true, but it is equally true that it has not yet become the absolute property of the plaintiffs. It is at all times possible for the policyholders to withdraw the entire fund from the insurance companies by canceling their policies. This fund is kept invested by the plaintiffs and a very considerable income is derived therefrom."

This is the conclusion of the referee from the evidence produced. The last sentence is a finding of fact.

The plaintiffs have a great deal to say about investment earnings and they attempt to class all investment earnings together as having nothing to do with the underwriting business, but the tabulations show that the investment earnings are of two kinds: the earnings arising from the invest-

ment of capital and surplus and those arising from the unearned premiums. We have taken account of the earnings arising from the investment of capital and surplus in Paragraph II above and refuse to allow that as a part of the underwriting profit for which the insurance companies are accountable for rate-making purposes.

As the reports show, the companies had on hand at all times during the five-year test period very large sums received in Missouri as unearned premiums, ranging from about ten million dollars at the beginning of the period to more than seventeen million dollars at the end of the period, [fol. 4041] averaging over twelve million dollars in hand all the time. This money, as the referee finds, was invested and earned profit. The amount given as the earnings, $2,301,132, shows that it was kept well invested and earned as much in proportion as capital and surplus. The capital and surplus allotted to Missouri was a little over fifty four millions, or an average of something less than eleven million dollars per annum.

Notwithstanding those book figures, the plaintiffs reason that there is no such thing as interest on unearned premiums; that in fact it cannot exist. The argument by which they arrive at that conclusion is extremely ingenious and is characterized by shrewd avoidance of patent facts. As we understand it, it amounts to this: In order to have interest on a fund there must be a principal sum and a term of time in which that sum is in existence. No unearned premium continues the same for any appreciable time. From day to day or month to month it ceases to become unearned premium and becomes earned premium. It diminishes by the process of attrition, as the referee aptly says. The unearned premium is gradually worn away and washed into the volume of earned premium. Therefore, if a thousand dollars of unearned premium were loaned out at interest today, there would not be a thousand dollars of that unearned premium tomorrow, but it would grow less and less until perhaps when the loan became due it would all be earned premium, and you could not segregate that part of the interest which accrued on the unearned portion from that part which accrued on the earned portion. Therefore, the earned premium "reserve," so called, is a myth. Plaintiffs' counsel then argue that "the division of premiums

into earned and unearned premiums is a rational division, not of the proceeds of premiums from policy-holders, as our learned opponents assume, but a bookkeeping division used as a means of segregating an income period."

Thus we are informed that the separation of the income from earned and unearned premiums is a bookkeeping fiction.

[fol. 4042] The answer to that argument seems plain enough. The companies have had, at all times during the test period, millions of dollars on hand constituting the unearned premiums. In Missouri it has averaged more than twelve million dollars. If a dollar of unearned premium ceases to become such and becomes a part of the earned premium, another dollar of unearned premium is paid in. As the fund at the one end is worn off by attrition, it is increased at the other end by accretion, so that the fund remains practically intact and continually earns profit. Because you cannot put your finger on the particular dollar that earns the interest, there is no interest on the fund of which it is a part, though each dollar removed from it is replaced by another dollar just as good. It would be just as logical to say that the U. S. standing army could not fight because its soldiers are gradually killed off or discharged and replaced by efficient recruits, so that in a generation none of the original soldiers remain.

By what sort of reasoning can it be separated from underwriting earnings? As the referee has found, it is not distributable as surplus. Though the money is in possession of the companies, it cannot be declared in dividends to the stockholders. Common sense and common reason would conclude that the premium being unearned, if it grows, the accretion is unearned. But whether the interest becomes the absolute property of the companies as soon as it accrues or not, it is a profit derived directly from the earnings of the underwriting business, and not from investments of distributed or distributable funds.

The plaintiffs present an elaborate argument to show that the unearned premium does not belong to the policyholders but is the property of the companies, that it is not a debt to the policyholders, nor held in trust for them. It is retained to provide against contingent losses. In that same con- [fol. 4043] nection the plaintiffs say that the segregation of

the unearned premium is a separation of the surplus into a distributable and non-distributable surplus. That is, the unearned premium is not distributable while the earned premium is distributable. If the earned premium remains in the surplus, its earnings would pass to the credit of the investment side of the corporation activities. But as long as it is not distributable, it cannot be said to be surplus at all. If, from the time it is paid until it may be distributed, it grows by additions of interest, the increase goes with the principal as a part of the underwriting profits; just as the interest on a note is part of the debt represented by the note.

In this connection it must be remembered that the plaintiffs have argued very forcibly on another point—that unearned premium is not an asset at all but a liability; that the company did not own the unearned premium at any time but held it subject to the contingency that it might be demanded. Thus the insurance companies own the unearned premium for the purpose of claiming interest on it as a part of the investment income, and they do not own it for the purpose of accounting for it as a part of the underwriting earnings. It is an underwriting liability for one purpose and an investment asset for another purpose. It is a profit for the purpose of attaching it to the surplus, but it is not a profit for rate-making purposes. The interest does not exist because you cannot designate the particular premium which earns the interest, but you can segregate the principal for the purpose of calling it an investment of funds owned by the companies.

It is suggested that we cannot count the unearned premiums as underwriting profit unless it is absolutely owned by the insurer. It is therefore argued that we cannot count the interest on the unearned premium as underwriting profit because that, in effect, would be compelling the insurer to [fol. 4044] pay interest on its own money to the insurer. The argument thus assumes that no funds owned by the insurer, no matter how acquired or how used, can earn a profit which can be attributed to the insurance business, and that the policy holder must own the money used in the insurance business before the earnings of it can be called underwriting earnings.

We are not taking an account between the insurance company and the policy holder; we are trying to find out how much the insurer profits by its insurance business.

The insured pays his premium and has no further claim on that specific money, but he holds a contract which the insurer must perform, and if it holds that unearned premium for the purpose of securing performance, is it not used in the underwriting business?

The Insurance Company, at its organization has the contributed capital of its stockholders. What income it receives by investment of that fund does not come from the underwriting business. That fund, as shown above, is increased from time to time by its own earnings, and by appropriations from the distributable surplus arising from the underwriting business. At what point do the underwriting earnings become investment surplus? Certainly not until they cease to be used directly in the underwriting business, and become distributable assets. Much is said about the reserve which an insurance company keeps on hand to meet the payment of losses and expenses. The evidence justifies the conclusion that this fund practically coincides with the unearned premiums. While it is invested and draws interest, it is no part of the investment fund; it is invested merely to safeguard it until it is needed, or until it becomes distributable. The plaintiffs do not class it with their other invested funds. It is used in the underwriting business, and the interest on it is a part of the profit of that business.

[fol. 4045] Suppose a judgment is rendered on an insurance policy, and the company sets aside a sum sufficient to meet the judgment. The Company appeals the case and the judgment after three years is affirmed. The Company pays it with interest accrued on it out of the money set aside for the purpose, which in the meantime has drawn interest so that it exactly satisfies the judgment. According to plaintiff's argument the interest on the judgment would be an underwriting loss, while the interest or money set aside to pay it would be an investment profit. Common sense would say that the fund is used in the underwriting business, and the interest accruing on it is attributable to that business. The entire unearned premium reserve is

in that position; what it earns while it is used in the underwriting business is underwriting profit.

It is manifest that if premiums were paid after the services were rendered, instead of in advance, the rate would have to be increased; not only to meet interest on the deferred payment, but also to cover losses from failure to collect. In that case there would be no unearned premiums, but the increased rate would make such a difference in the sums received that it would be a mere conjecture as to how the five years' accounting would compare with present conditions. Taking all respondents' arguments on the subject, the ultimate logical conclusion is this: There never can be any underwriting profits. For, no premium can be counted as profits before they are earned; after they are earned they go into the investment surplus and cannot be counted as underwriting profits.

After all, however we may reason about the character of unearned premiums and interest on them the statute settles the matter.

Section 6281, R. S. 1919, required each of them to report to the superintendent "the total amounts of its earnings on [fol. 4046] earned premiums." Defendants assert, and plaintiffs do not deny that the Rating Act containing that provision was the joint creation of the State Insurance Department and the insurance companies. It was satisfactory to them at the time. Why put it in the law if the superintendent was not to consider it in making rates? Why embody in the statute a recognition of a phantom, a requirement to furnish evidence of something which does not exist? We regard that statute as a legislative determination that interest on unearned premiums is an underwriting profit, for the legislative body had no concern about any other kind of profit.

V. The insurance companies were granted an increase in rates of fifteen per cent on certain classes of risks in January, 1920. That increase was in partial effect during only two years of the period under consideration. The plaintiffs contend, and the referee found, that the effect of that increase was not to be taken into consideration in determining what rates shall be for the future.

It is first important to consider the effect already had of that increase. Mr. E. G. McGee, Special Examiner for

the Insurance Department explained it. The increase applied only to seventy-one per cent of the total business of [fol. 4047] the State. It did not go into effect at once, but went into effect gradually, as risks were reinspected by the companies or by the rating bureau. In 1920 the increase applied to about twenty-one per cent of the seventy-one per cent, and in 1921 twenty-eight per cent, so that during the five-year test period there were three years in which the increase had no effect and in the remaining two years only partial effect. In 1921 the twenty-one per cent effective caused an increase in the premiums received of $489,683. The increase effective in 1921 increased the premiums for that year $594,761. These added together made the total of $1,084,444. If the entire increase of 1920 had been in full effect during the whole test period, it would have amounted to $8,777,489. Subtracting the $1,084,444, you have $7,693,045 as the amount of the additional premiums which would have been received by the companies during the test period if the increase had been in full effect during the five years. This is sufficient to more than offset the effect of the reduction of 1922, both the increase and the reduction being in effect.

The plaintiffs advance two reasons why they claim this increase should not be considered. First, that it is mere conjecture as to what effect it would have in the future. They say "all such speculations are foreign to any proper consideration and so are any rate changes which may have occurred from time to time during the five-year period in question." If it is a mere speculation as to what effect the fifteen per cent increase would have when put in full operation, then the plaintiff should make no complaint of the order decreasing the rate ten per cent, for the effect would be a mere matter of speculation. As a matter of fact, Mr. McGee showed exactly what the effect of the increase was as put in operation, and the figures are as exact as such matters can be as to what the effect would have been if it had been in full operation. But, of course, all such figures [fol. 4048] for the future are dependent upon the actual business done and other considerations, which would affect the reduction as well as the increase.

There was no dispute as to the accuracy of Mr. McGee's figures in respect to the past effect of the increase. He said,

in relation to the future effect of the order increasing the rates, that it would be in full effect in 1925 or 1926, but the companies could put it in full operation much earlier by employing sufficient force to undertake the inspection necessary. It was with the companies whether they would put it into operation sooner or later. The reduction order was to go into effect November 15, 1922, nearly three years after the increase had been ordered. By that time, with the same progress already made, there would be nearly fifty per cent of the classes affected under the increased rate, with every probability that it would reach and overcome the effect of the reduction in the course of another year. Thus the increase would be generally effective soon after the reduction order went into effect and would more than offset it during the next five-year period. This is calculated with reasonable certainty.

The second reason advanced by the plaintiffs why this increase should not be considered, is that the statute does not authorize it. Section 6283, Revised Statutes 1919, empowers the superintendent to "investigate the necessity for a reduction of rates" and if it appears that the result of the earnings for five years next preceding the investigation "shows there has been an aggregate profit therein in excess of what is reasonable" he shall order a reduction. The plaintiffs contend that that limits his consideration to factors in operation during the test period; that he cannot consider anything which would affect the rates at the time the order is made, whether it would reduce or increase the earnings that would accrue after the order was made. Let us see what would be the effect of that theory. There are [fol. 4049] two factors connected with the rates under consideration here which affected the rates during the test period and have a different effect after the order was made. One is the war tax which was in operation during the test period, not in operation now, and the other is the increase of fifteen per cent which was not in effective operation appreciably during the test period and will be in operation after the order goes into effect. Under the theory of the plaintiffs neither of those factors could be considered. The elimination of the war tax would reduce the expenses for the future. But that is not to be considered. The increase of rates in 1920 increases the income for the future.

But that is not to be considered. The superintendent can only reduce the rates the exact amount of the discovered excess, is the theory.

In thus narrowing the effect of the statute, the plaintiffs make the letter of the law destroy its purpose. The purpose of the examination and investigation was to provide reasonable rates for the future. The superintendent "shall order such reduction of rates as shall be necessary to limit the aggregate collections by insurance companies in this State to not more than a reasonable profit." This part of the statute must be given effect as well as the part quoted above; they must be reconciled if possible. "Not more than reasonable profit" can have no application except to the future and is to be determined by the factors affecting the rates for the future as they exist at the time the order is made. If the war tax is no longer on, then he must consider that as affecting the expenses for the future. If a prior increase become effective, then he must consider that as increasing the income for the future. If not, then what becomes of the effect of the statute that he "shall" reduce the rates to not more than a reasonable profit? That is mandatory and imperative. He cannot reduce rates so as to affect previous profits. The only purpose of his order is to secure reasonable profits in the future.

[fol. 4050] For the purpose of this case, let us give the statute the narrow construction contended for, that he cannot order a reduction unless the profits have been theretofore too large and he can only consider what the profits were during the test period in determining whether they were too large. But he is not limited to that in considering what thereafter would be reasonable. If, from the information before him, he is justified in finding them theretofore too high, he may reduce them to what will be reasonable and in doing so he may consider every factor which would affect the rates for the future.

Suppose the war tax had been in operation during the five-year test period, and was equal to the total amount of the decrease ordered, ten per cent, and suppose during the period the companies had made something more than a reasonable profit, no matter how much nor how little; he would be justified in reducing the rates so as to be reasonable and take into consideration that there is no war tax at the time

he makes the order and will not be thereafter. He is not limited in his reduction to the exact amount of the excess he found in the test period. Thus, both of the clauses quoted may be given effect.

Suppose also that there had been an increase of rates of ten per cent the year before the reduction was ordered, and then a year later the plaintiff makes an order reducing the rates ten per cent, the exact amount of the previous increase so the reduction would exactly neutralize the increase. Under the argument of the plaintiffs you could consider the reduction but could not consider the effect of the increase. In other words, you could not consider that the reduction had no effect whatever, if taken into consideration with the increase. The intention of the Legislature certainly did not contemplate such a construction.

Suppose the order of 1920 had been a reduction of the rates of fifteen per cent instead of an increase, and that [fol. 4051] reduction was to go into effect in the same way the increase was to go into effect, would the insurance companies contend that that previous reduction, not yet fully effective but to become effective, should not be considered in determining whether an additional reduction would provide for a reasonable profit? Their managers are not human if they would; they would not be acting in accordance with the known sagacity of insurance officers and agents if they would permit the reduction order to be considered without protesting the effect of the previous reduction order. We think, therefore, that it was entirely proper to take into consideration the previous increase of fifteen per cent.

VI. In the city of St. Louis commissions were paid to agents much higher than in any other part of the State. These excess commissions amounted during the test period to $2,496,718. The plaintiffs explained that by saying that in larger cities, called excepted cities, such as St. Louis, brokers controlled the placing of a large portion of the insurance written and they charge the insurance agents a commission for placing the business with them. Thus the people in the rest of the State must pay a higher rate for their insurance in order that the insurance agents in the city of St. Louis may receive a higher commission and pay the brokers a rake off.

The plaintiff attempts to justify that by saying that it has been in operation for a long time, and it is impracticable to do away with the custom; that the commissions to brokers in St. Louis are not paid by the companies but paid by the agents out of their own funds. The agents pay it out of their own funds, but they recoup in charging larger commissions for the risks they write, and thus increase expenses which are charged up as a part of the aggregate expense of operating in Missouri, and therefore must affect the rates.

Mr. George H. Bell, testifying for the plaintiff, said that practically those increased commissions did not affect the rates in Missouri, while theoretically they might. If it is [fol. 4052] not intended to have any practical effect, it should not be charged. No excuse or justification for so charging it and thus affecting the rates is presented anywhere. People in the State of Missouri should not be required to pay a higher rate for their insurance in order that agents in St. Louis may have an easy time and divide their commissions with brokers. People would insure their property just the same as they do in that city, even if agents did not get their business from the brokers, nor compete with each other for the favors of brokers.

VII. The plaintiffs set forth a table of expenses apportioned to Missouri, expenses which did not accrue in Missouri on account of business done in Missouri, but head-office expenses and the like which apply to the whole country. This apportioned expense amounted during the entire period to $6,938,489. We assume that the expenses apportioned to Missouri are in the direct ratio of the business done in Missouri to that of the rest of the country.

One item of the apportioned expense deserves special notice, the Federal income tax, $542,933, which is apportioned to Missouri on the theory that it is Missouri's part of the income tax paid. But according to the figures presented by the plaintiffs they had no taxable income in Missouri; they operated at a net loss during the test period. In presenting their income tax returns they use the same method which they apply in determining their underwriting profits in Missouri. We will not presume that in handing in their statement of their taxable income, they showed their income higher than that which they presented in this case for rate making purposes. They show, instead of a net

income which could be taxed, a net loss, so that no income tax was paid for Missouri. Therefore, that item was improperly charged as an expense to the State of Missouri.

VIII. Another tax amounting to $628,123 was a war tax paid on Missouri premiums. The law imposing that tax was no longer in operation at the time the reduction order [fol. 4053] was made, but in Paragraph IV we have sufficiently explained why that should not be charged. Plaintiffs present no reason why that tax, which would not be imposed from the time the order was made, should be listed as an expense in fixing future rates.

IX. Much discussion is taken up as to whether the apportionment to Missouri of head-office expenses is reasonable, or whether any expenses are reasonable. The superintendent in making his order suggested the unreasonableness of expenses; that policyholders were burdened with fraudulent losses because of over-insurance, improper inspection and the like. We find it unnecessary to go into those matters chiefly because facts in regard to them are unsatisfactory and because unnecessary for our purpose here. The Act of 1923 gives the superintendent more latitude and additional powers in relation to investigation of those things, so that in his future investigations of the insurance conditions the subject may come before us for consideration.

X. We summarize our conclusions as follows:

Premiums 1917-1921			$83,502,181
Add interest on unearned premium			2,301,132
Total income			$85,803,313
Losses and Expenses		$80,161,057	
Deduct:			
Excess commissions in St. Louis	$2,496,715		
Federal income tax	542,993		
	$3,039,708	3,039,708	
Actual loss and expense		$77,121,349	77,121,349
Actual net earnings			$8,681,964

If the war tax had not been in operation it would have been	628,123
	$9,310,087
If the increase of 1920 had not been in partial effect, the net earnings would have been	1,084,444
	$8,225,643

[fol 4054] As stated above, a reasonable profit is five per cent on the business done, premiums received, and three per cent additional for conflagration hazard, or eight per cent, which would be $6,680,169 for the test period. Therefore, $8,681,964 was an unreasonable profit and justified a reduction under the circumstances shown. With the war tax eliminated it would have been $9,310,087, about forty per cent more than what was conceded to be a reasonable profit.

The effect of the increase ordered in 1920 can be estimated from the effect it had in that year and the following year, 1921. The evidence shows that the increase was applied gradually on reinspection, but that the companies could apply it entirely if they should see fit to increase their inspection force. As it was, a much larger amount was applied in 1920 than in 1921. But we may assume that the average increase in the application of the increase would be the same in the next two years, 1922 and 1923. Since the reduction order of ten per cent was to take effect only late in the year 1922 the first year during which it was in full effect was the year 1923. So we must estimate the probable effect of the fifteen per cent increase as applied in that year. The increase in the first two years, 1920 and 1921, yielded $1,084,444 additional profit. We may assume that the two following years, it would yield twice that much, of $2,168,888. It would do so at the same average rate of inspection and application. Of course, more of that would be credited to the latter year 1923 than to 1922, naturally in the proportion of four to three. That is, there should be, with an average rate of increase, the new rate in the fourth year should yield four-thirds as much as it yielded in the third year. Then the way to arrive at the probable yield from the increase in 1923 would be to divide that sum by seven and multiply by four.

Divided by 7	$2,168,888
	$309,841
Multiplied by 4	4
	$1,239,364

[fol. 4055] The last figure is the probable yield from the increase in 1923. Now the net profit during the previous five years, without taking account of the fifteen per cent increase as shown above,

was	$8,225,643
Divided by 5	$1,645,128
per year average. Add	1,239,264
Total net profit	$2,884,392

for 1923.

This would be net profit for the year 1923 with the fifteen per cent increase in operation as far as it was effective at that time. That multiplied by five would give, for five years, $14,421,960. The premiums collected on fire, lightning, hail and windstorm insurance during the five-year period, affected by the reduction order was $71,347,512.

	$14,421,960
Subtract ten per cent	7,134,751
And you have	$7,287,209

with the reduction of ten per cent in full operation and the increase of fifteen per cent in operation as far as it was probably applied at that time. This is more than the eight per cent conceded to be a reasonable profit, and it would be increased in subsequent years as the fifteen per cent increase was applied until the total yield would be much more than the conceded reasonable profit.

Therefore, we conclude that on the evidence before the referee and the trial court the reduction order was authorized as it was made. The judgment of the trial court is, therefore, reversed and the proceeding dismissed.

Atwood, Graves & Walker, JJ., concur. Ragland, J., & Blair, C. J., dissent. Otis, J., not sitting.

J. T. White, Judge.

[fol. 4056] [File endorsement omitted]

[fol. 4057] IN THE SUPREME COURT OF MISSOURI

[Titled omitted]

DISSENTING OPINION—Filed May 26, 1926

I am unable to concur in some of the conclusions reached in the majority opinion. The questions involved are not only of present moment but as time goes on will become increasingly important. For that reason I feel it incumbent upon me to set forth in some measure the grounds of my dissent. For lack of time to prepare a dissenting opinion which accords with conventional standards I shall content myself by quoting from the opinion prepared by me soon after the submission of the case three paragraphs, dealing respectively with the questions of investment earnings, interest on unearned premiums and the proper method of determining profits—whether on the basis of earned premiums or that of premiums received, and then adding very briefly the specific grounds on which I base my non-concurrence.

"I

"The assumption by the State of the power to regulate the rates which may be charged for insurance, on the [fol. 4058] ground that the business is clothed with a public interest, is of comparatively recent origin, the first statute in this State having that end in view (Sections 6283 and 6284, R. S. 1919) having been enacted in 1915. Whether investment earnings of the insurers should be taken into account in determining rates, as well as many other questions having a bearing on rate regulation, must therefore be resolved upon a consideration of the nature of the business of underwriting and the application of general principles rather than upon precedent.

"The underlying economic principle of all insurance is the distribution of loss resulting from designated perils

among a great many persons so that the loss to the individual will be thereby minimized. The business of fire insurance contemplates the existence of a known danger to which all property owners are exposed but from which only a few will suffer loss. The function of the insurer is to collect from the great number exposed to the peril a sufficient sum to reimburse the few who actually suffer loss therefrom. And this is true whether the insurer be a mutual company, or a stock company. There are certain fundamental differences, however, between a mutual company and a stock company which affect the amount of premiums which each may rightfully collect from its policy holders. Speaking generally, a mutual company may collect from the persons insured only such sums as in the aggregate will cover the losses, which under the law of average can with reasonable certainty be forecast, and in addition thereto such further sums as are necessary to meet the expense of conducting the business. If such sums prove to be inadequate the insured persons are subject to assessments to the extent necessary to make up the deficit. The policy holders of stock companies on the other hand are [fol. 4059] not subject to any such contingent liability. In consideration of definite and fixed premiums these companies assume all liability including that for losses resulting from an abnormal experience. For its services in underwriting, that is, collecting from the many a fund with which to pay, and paying, the losses of the few, and the assumption of all liability for losses, a stock company is entitled to remuneration. Consequently it may rightfully exact premiums which in addition to paying losses and expenses will be sufficient to yield a reasonable profit. The securing of such an underwriting profit is in fact the fundamental purpose for which all stock companies are organized.

"In the case of a mutual company the contingent liability of all the persons holding similar contracts is deemed a sufficient guaranty that the funds necessary to pay the losses suffered by the few will in any event be forthcoming. But as the contracts of a stock company have no such security behind them, such a company is required by economic as well as by municipal law to have at hand at all times a sufficient fund, in cash or prescribed securities, to discharge

in full every liability which it has assumed or incurred. Such fund is made up for the most part of capital stock and surplus, the surplus in the first instance as well as the capital stock being contributed by the stockholders of the company. This fund is not in any proper sense employed in the business of underwriting. It is the nature of a pledge put up by the insurer to secure the performance on its part of its several undertakings, and if in an emergency the fund be called upon for the payment of losses or expenses to such an extent that it no longer covers the company's maximum liability, it must be immediately repaired by contribu- [fol. 4060] tions from the stockholders, or else the company must cease business. The capital and surplus being therefore a guaranty fund must at all times be kept intact. It is not, however, permitted to remain inactive but is invested in interest bearing securities. The earnings from these investments are a by-product, so to speak, of the business of underwriting, a business always initiated and prosecuted for the purpose of making an underwriting profit. As already pointed out a stock company is clearly entitled to a reasonable underwriting profit on account of the service it renders and the liability it assumes. Can there be any reason why it is not entitled to receive in addition such returns as it may be able to secure from the funds it has been compelled to withdraw from the active channels of trade and commerce in order merely to furnish the requisite guaranty that it will perform its contracts as an insurer? On what theory of law or morals can it be compelled to accept earnings on its own capital independently employed in lieu of the reasonable profit it is entitled to derive from the business of writing insurance, or even in reduction of that profit?

"Impressed with the great peril of conflagrations, such as the Chicago Fire and later the San Francisco Fire, the majority of stock companies began a number of years ago to largely augment their capital and surplus. This was accomplished through additional contributions by the stockholders and the passing to the surplus earnings of all kinds instead of distributing them as profits. Through this process millions of dollars were in the course of time added to the surplus of most of the companies. As a consequence the interest earnings on the capital and surplus now yield

in many instances dividends which, if computed on the [fol. 4061] basis of capital stock, are enormous, and are more than generous if reckoned on combined capital and surplus. To take these investment earnings into consideration in determining insurance rates is equivalent to the State saying to the companies: in as much as the returns on your investments are now sufficient to yield you a reasonable profit, you must hereafter write insurance and subject your accumulated capital to its hazards without compensation.

"Appellant in support of his argument that the investment earnings of insurance companies must be taken into account in determining rates cites cases holding in effect that the owner of private capital who employs it in the public service is entitled to a reasonable return thereon and nothing more. These cases are without application. The insurance companies are not asking for any return on their private funds, even if they be deemed to be employed in the business of writing insurance. They are satisfied with the returns accruing to them from an independent source and the State can not confiscate those returns under the guise of regulating rates of insurance.

"There appears to be some apprehension on the part of appellant lest policy holders in this State be charged with rates which are based in part on losses arising from the unsafe investment of funds. If in the foregoing we have set forth a proper conception of the relation of the capital and surplus of a stock company to its business of writing insurance, it follows inevitably that investment losses can not be recouped through increased underwriting charges, but must be made, if at all, by contributions from the stockholders.

"II

"Fire insurance policies are ordinarily written [fol. 4062] for terms of one, three or five years. A single premium is paid in advance for the insurance for the full term whatever it may be. Under the provisions of all policies an insured may at any time during the term, if he so elects, present his policy for cancellation and demand a return of the unearned premium. The unearned premium, theoretically at least, is that proportion of the whole pre-

mium which the unexpired time the policy has to run bears to the full term for which it was written. According to legal standards, and perhaps economic as well, a stock company is solvent when, and only when, it has sufficient assets to pay all of its incurred losses and expenses and return as upon cancellation the unearned premium on all of its policies.

"The liability growing out of the obligation to return unearned premium is of course contingent upon the insured tendering his policy for cancellation. In order to ascertain the exact extent of this contingent liability of an individual company at a given time, it would be necessary to make the computation on each of its outstanding policies. This being manifestly impracticable where there is a large volume of insurance in force to which new policies are being added daily and with respect to which the unearned premium is constantly changing through the lapse of time, arbitrary standards have been set up for determining the unearned premium liability. Under the Missouri Statute it is 'estimated by taking fifty per cent of the gross premiums an all unexpired fire risks that have less than one year to run, and a pro rata of all those premiums on risks that have more than one year to run.' Section 6222, R. S. 1919, in insurance parlance 'a reserve' is maintained to cover unearned premium liability. But such 'a reserve' is purely a bookkeeping fiction. The rates are not loaded for the purpose of creating such a separate fund. None in fact [fol. 4063] exists. The phrase 'unearned premium reserve' merely designates the amount of the contingent liability to which all the assets of a company are subject. Of course if those assets are not sufficient both to discharge incurred liabilities and to cover the contingent liability a proper 'reserve' is not being maintained.

"All the assets of a stock fire insurance company, by whatever name designated, are its absolute property, and so long as it is a solvent going concern its policy holders have no more interest therein than the creditors, actual and potential, of a trading corporation have in its assets under similar conditions. They are not entitled therefore to appropriate earnings arising from the investment of any part of the company's assets to the reduction of the cost of their

insurance below a figure, that will yield a reasonable underwriting profit.

"III

"Section 6282, R. S. 1919, is in pari materia with Section 6283 heretofore set out. A reading of the two sections together makes it clear that the 'earnings in this State' referred to in the latter are to be determined from 'the aggregate amount of * * * premiums, losses and expenses for or on account of business within the State for the five preceding years * * * and in addition thereto * * * earnings on unearned premiums.' For constitutional reasons indicated in a preceding paragraph 'earnings on unearned premiums' must be eliminated from consideration. The intent of the Statute in other respects must, if it can be ascertained, be given effect.

"As heretofore stated it is the contention of the companies that the earnings of a given period on which underwriting profit can be predicated are determined by [fol. 4064] deducting from the premiums earned during that time the losses and expenses incurred. The method employed for ascertaining the amount of premiums earned is this: Add the unearned premiums at the beginning of the period to the aggregate net premiums received during that time and deduct from the sum the premiums unearned at the end of the period. Incurred losses and expenses are arrived at in this way: Subtract the outstanding incurred losses and expenses at the beginning of the period from the losses and expenses paid during that time and then add the losses and expenses unpaid and outstanding at the end of the period. According to the method of determining earnings just outlined respondents lost during the period in question in their underwriting business $7,010,200. During the entire period their business was steadily expanding, the rate of increase being pronounced. As a consequence the figure indicating unearned premium at the end of the period was much larger than the one representing unearned premium at the beginning. Had those figures been transposed, that is, if the larger one had represented the unearned premiums at the beginning of the period and the smaller one the unearned premiums at its close, according to the method of computing earnings just described the

companies would have had an underwriting profit of more than $9,000,000. To express it differently: when the companies are prosperous and increasing the volume of their business, according to this method of computing earnings, they are losing money; when their underwriting is falling off they are piling up profit. It should not be forgotten that 'unearned premium' is but an arbitrary measure of contingent liability. Such liability while it necessarily increases with an expanding business is by no means a true exponent of underwriting earnings. An insurance accountant of many years experience, testifying for respondents, [fol. 4065] stated that while the fire insurance business had been rapidly increasing in volume during the last twenty years, the companies according to the method of computing earnings which they now invoke had during the whole of that time made an underwriting profit of less than one per cent. It was the witness' theory that the huge surpluses which they have managed to accumulate during that time resulted from investment earnings, but it is unbelievable that corporations organized for profit would have continued for such length of time to hazard their capital in the business of underwriting if that business in fact yielded no profit. The method of determining profit which respondents seek to have applied is clearly unsound.

"In their bookkeeping the companies at the close of each year strike what their accountants term a trade balance. This balance is derived by deducting from the aggregate net premiums received during the year the total losses and expenses paid during that time. The net premiums consist of all premiums received less the pro rata returned upon cancellation and sums paid for reinsurance. When a loss occurs an estimate of the amount is entered upon the books as an 'incurred loss.' When the loss is subsequently adjusted it is paid. The amount paid is frequently reduced by salvage or recoverable reinsurance. But losses regardless of when they occurred are paid out of current premium receipts. The distinction between incurred expenses and paid expenses is negligible. All expenses with the exception of taxes are ordinarily paid within the year in which they are incurred.

"The annual trade balance of a company engaged in a continuing business, being the difference between its re-

ceipts on the one hand and its expenditures on the other, during the preceding year, must necessarily reflect with a [fol. 4066] fair degree of accuracy its earnings for that period. To be sure such balance would not be indicative of solvency as heretofore defined, nor would it properly represent net earnings if the distribution of assets upon dissolution were involved, but nevertheless it can not be gainsaid that it does in fact constitute the clear earnings of the period embraced, if that period be considered apart from those which preceded it and those which follow, as is the case where a basis for rate regulation under the Statute is sought.

"Based on the conclusions reached in the preceding paragraphs we are of the opinion that the 'aggregate amount of * * * premiums, losses and expenses for or on account of business within this State * * * for * * * five years next preceding' intended by the Legislature were the aggregate net premiums received and the losses and expenses paid during the five-year period. That is the construction which has been placed upon the Statute by the insurance department of the State at all times since its enactment, and the construction which the plaintiff companies themselves have heretofore acquiesced in and acted upon in their applications for increase of rates. The stand now taken by them has the appearance therefore of having been contrived by ingenious counsel, or by possibly more ingenious insurance accountants, for the purposes of this case. On the basis of premiums received and reported losses and expenses paid the companies earned during the test period in question an underwriting profit of $3,341,124, or four per cent of the aggregate net premiums."

The only material divergence between the foregoing and the majority opinion dealing with the same subject matter is in respect to paragraph II. The latter opinion holds that in determining the underwriting profits of the companies interest on unearned premiums must be taken into account. [fol. 4067] The argument through which this conclusion is derived is in substance this: Unearned premium must, constructively at least, be segregated and kept apart from the other funds of the companies and held intact so that until it is earned it will at all times be available for return to the policy holder if cancellation be demanded, or for re-insuring if the insurer becomes insolvent or quits business, and as

the unearned premium can not be distributed among the stockholders as profits, but must be kept on hand until earned, the interest accruing on it is attributable to the underwriting business and is therefore one of the profit-making elements of that business. This reasoning seems to me to be specious. There is no magic in the word "attributable." The interest earnings on so much of the companies' assets as would be consumed in re-insuring all of their risks are no more attributable to the underwriting business than are the earnings on the remainder of their assets, and it is conceded by the opinion that the latter can not be taken into consideration in determining underwriting profits. If, however, the view that interest on unearned premiums should be charged up to the insurer in determining his underwriting profits be the correct one, then the method of arriving at profits which takes unearned premiums into account is wrong. Unearned premium, in whole or in part, can not be reckoned as profit and at the same time the insurer be required to pay interest on it to the policy holder.

There is but one theory consistent with the companies' constitutional rights upon which it can be held that they must account for interest on unearned premiums, namely: that the premiums, being paid in advance, must be regarded as in a sense the moneys of the policyholders until earned by the elapse of time. For if the premiums as soon as they are received by an insurer become without qualification his absolute property, then certainly he can not be required to pay to the policyholders interest on them, or what is tantamount thereto, apply such interest to the reduction of the [fol. 4068] cost of their insurance. Such a requirement in that view would be plain confiscation. And if the premiums belong to the policyholders until earned, then until that time arrives the insurer can not strike a balance for the purpose of ascertaining his profits. In other words, if the interest on unearned premiums enter into underwriting profits, such profits must be determined upon the earned premium basis.

For many years antedating the enactment of our rate statute it was the universal custom and practice of stock fire insurance companies to compute their underwriting profits on the basis of earned premiums. And that is the basis for determining the net income accruing from the business of underwriting as recognized in the income tax

laws both of England and the United States. It is therefore entirely possible that our rate statute contemplates the same method of ascertaining underwriting earnings and profits, and, if so, that the statute be upheld with respect to its provision that the earnings on unearned premiums shall be taken into account. But be that as it may, it is clear to my mind that the majority opinion is wrong in holding on the one hand that underwriting profits must be determined upon the basis of premiums received, which includes both the earned and unearned, and on the other hand that interest on unearned premiums must be taken into account.

The majority opinion further holds that the increase of rates ordered in 1920, and which had not become effective at the time the reduction order was made, should be taken into consideration. To this I do not agree. The power as well as the duty, to order a reduction of rates is predicated by the Statute upon this fact: that "it appears that the result of the earnings * * * for five years next preceding such investigation shows there has been an aggregate profit * * * in excess of what is reasonable." In the face of this plain and unambiguous language how can it be held that the estimated earnings of a future period may be made the basis of such an order? There is no call for either a [fol. 4069] strict or a liberal construction of the Statute. If its words be taken in their usual and ordinary sense there can be no mistake as to its meaning. The so-called liberal construction employed in the opinion merely masks the attempt to judicially improve (?) the handiwork of the Legislature.

D. E. Blair, C. J., concurs.

William T. Ragland, J.

[fol. 4070] [File endorsement omitted]

[fol. 4071] Supreme Court of Missouri

[Title omitted]

Respondents' Motion for Rehearing—Filed May 28, 1926

Now come the respondents in the above entitled cause and respectfully move the court to set aside the opinion, order and judgment rendered in this cause by this Honor-

[fol. 4072] able Court, and to grant to the respondents a rehearing of this cause, because:

1. Questions decisive of the case and duly submitted by counsel for respondents have been overlooked by the court, as hereinafter more particularly pointed out.

2. The decision herein is in conflict with an express statute (Section 6283, R. S. 1919) as hereinafter more particularly pointed out.

3. The decision herein is in conflict with Section 6284, R. S. 1919, as herein more particularly pointed out.

4. The decision herein is in conflict as hereinafter pointed out, with the following controlling decisions of the Supreme Court of the United States, to which the attention of this court has not heretofore been called:

Fidelity & Deposit Co. of Maryland v. Tafoya, 46 Sup. Ct. Rep. 331.

Northern Pacific Ry. Co. v. Dept. of Public Works, 268 U. S. 39.

Ohio Utilities Co. v. Public Utilities Commission, 267 U. S. 359.

New York & Queens Gas Co. v. McCall, 245 U. S., l. c. 348-349.

Interstate Commerce Commission v. Railroad Co., 222 U. S., l. c. 547.

Bluefield Co. v. Public Service Commission, 262 U. S., l. c. 689-690.

Interstate Commerce Commission v. Ill. Central R. R., 215 U. S., l. c. 470.

Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433.

State of Missouri ex rel. Telephone Company v. Public Service Commission, 262 U. S., l. c. 288-289.

[fol. 4073] 5. The rate reduction order of the superintendent of October 9, 1922, as construed, defined, delimited and approved by the opinion of this court, is confiscatory, unreasonable, unconstitutional and void, and takes the property and property rights of the respondents without due process of law, and denies them the equal protection of the laws, in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

The court errs in rejecting the earned premium method and in adopting the written premium method of ascertaining underwriting profit or loss.

6. The said rate reduction order, as construed and approved by the opinion herein bases the determination of respondents' alleged profit in Missouri during the five year test period upon the amount of premiums alleged to have been received less the amount of losses and expenses alleged to have been paid by respondents during said period, instead of upon the amount of premiums earned less losses and expenses incurred by respondent companies during said period; and in so doing, said order deprives the respondents of their property and property rights without due process of law, and denies them the equal protection of the laws, in violation of said Section 1 of the 14th Amendment of the Constitution of the United States.

7. The uncontradicted evidence shows and the opinion finds (page 6) that the amount of premiums written by re- {fol. 4074} spondents in Missouri during the test period was $83,502,181. Of this amount only $74,813,816 were earned by respondents during said period (page 6). This leaves a balance of $8,688,365 of premiums written, but not earned, during said period.

Although the prime purpose of the inquiry herein is to ascertain the amount of respondents "earnings" during the test period, the opinion illogically and unreasonably includes in the profit tabulation the full amount of premiums written ($83,502,181), including both earned and unearned; and thereby includes $8,688,365 of premiums which admittedly were not earned by respondents during the test period. The rate reduction order in question follows the same erroneous method of calculation.

The rate reduction order and the opinion of the court, in so charging respondents with $8,688,365 of premiums written but not earned, and in so treating all premiums written ($83,502,181) as if earned (in the face of the conceded fact that $8,688,365 thereof were not earned), adopt a fundamentally erroneous method of calculation, and calculate respondents' profit or loss in so capricious and unreasonable a manner as to be confiscatory; and thereby respondents are deprived of their property without due process of law,

and are denied the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The opinion in the respects aforesaid is in direct conflict with the following controlling decisions (all but the first of which decisons have not heretofore been called to the atten-[fol. 4075] tion of the court upon this point):

Northern Pacific Ry. Co. v. Dept. of Public Works, 268 U. S. 39.

Ohio Utilities Co. v. Public Utilities Commission, 267 U. S. 359.

New York & Queens Gas Co. v. McCall, 245 U. S., l. c. 348-349.

Interstate Commerce Commission v. Railroad Co., 222 U. S., l. c. 547.

Bluefield Co. v. Public Service Commission, 262 U. S., l. c. 689-690.

Interstate Commerce Commission v. Ill. Central R. R., 215 U. S., l. c. 470.

8. By the rate reduction order of the Superintendent of Insurance, and by the opinion of the court herein, a portion of the premiums received by respondents during the test period, to-wit, the portion known and designated as unearned premiums, being the portion thereof which respondents did not earn during said period, are held and treated as a part of their earned income during the test period, for the purpose of the rate making tabulation. By such provision of the Rate Reduction order, and by such holding in the opinion, the respondents are subjected to a confiscatory reduction in rates upon a fundamentally erroneous method of calculation, and are thereby deprived of their property without due process of law, and are denied the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

[fol. 4076] 9. The court's opinion (pages 20-21) holds that unearned premiums are assets of the respondents, and indeed are profits. This holding is in direct conflict with the recent unanimous opinion of this Honorable Court en banc in State ex rel. Hyde v. Falkenhainer, 274 S. W., l. c. 726, wherein this court held that the unearned premiums of a

surety company constituted liabilities due its creditors. This holding in the Falkenhainer case is sound. It is irreconcilably inconsistent with the fundamentally erroneous theory, now announced for the first time by any court, that unearned premiums can be treated as gross profits.

10. The opinion of the court in rejecting the earned premium method and in adopting the written premium method of calculating underwriting profits, is in direct conflict with the Acts of Congress, to-wit, Sec. 246-A of the Revenue Act of 1921, and Sec. 6336 of the Revenue Act of 1924, which expressly define underwriting income of insurance companies to be premiums earned less losses incurred and expenses incurred.

11. The court errs (page 21 of opinion) in holding, in effect, that the earned premium method, while proper as a test of solvency, is improper as a test of underwriting profit or loss. This holding is illogical, in that, while conceding the earned premium method is proper as a test of solvency, it holds it to be improper as a test of underwriting profit or loss. If it is proper as a test of solvency it is obviously proper as a test of underwriting profit or loss. The object in each instance is to determine the same question, namely, how much profit or loss the companies' operations show. [fol. 4077] The error into which the court has fallen in this particular is indicated by the next sentence in the opinion, wherein the court says that it is not a proper test of values to consider them in the light "of a forced liquidation." The solvency test, so called, does not contemplate liquidation, but contemplates a just division of premiums into two parts, earned and unearned, the earned premiums being those applicable to an elapsed period and the unearned premiums being those applicable to a period yet to come. A forced liquidation is not in contemplation by the use of such a test, and the test is as completely applicable if no cancellations occur as if they do. It is a proper method of reserving a part of an advance payment by dividing the same into two parts, where service is to continue beyond the period of time, one part chargeable ratably to the period elapsed and the remainder chargeable ratably to a period not yet elapsed.

The court, in these considerations, has overlooked the pertinent language in the case of Bullion v. Aetna Insurance

Company, 171 Ark. 519, 237 S. W., l. c. 718, as set forth in brief of respondents, page 176, to the effect that if the earned premium method "is the proper method to determine solvency, it is necessarily the proper method to determine whether profits have been made."

12. The court errs (page 19 of opinion) in its conclusion that the earned premium method, while the statutory test for solvency purposes (Section 6222 R. S. 1919), and the test prescribed by statute upon which to determine distri- [fol. 4078] bution of dividends (Section 6333 R. S. 1919), is not a proper test for determining profit or loss for rate making purposes.

13. The court errs in its considerations of the earned premium method, in that the court's rejection thereof is contrary to the overwhelming evidence in the case, showing that such method has been uniformly used by the companies in their own profit calculations, made for their own information, and not for rate making purposes, for more than forty years, and is universal in the business. See Résumé of Evidence, Respondents' Brief, pages 171 to 175.

14. The court errs in its opinion (page 18) in its conclusion, respecting the earned premium method, in saying that "When the companies are prosperous and increasing the volume of their business according to this method of computing the earnings, they are losing money; when their underwriting is falling off, they are piling up profit." The court errs in assuming that the increased volume of business will be productive of increased profit or is productive of prosperity. It may produce increased loss, or even disaster.

15. The court errs in its opinion (page 20) in holding that there is some impropriety in the earned premium method in the fact that premiums applicable to a period outside the test period are rejected and expenses incurred and paid during the period are charged as outgo. To reject premium income for which value has not yet been delivered, and to take into account expenditures in fact incurred and paid, is the only measure consistent with proper setting up of in- [fol. 4079] come and outgo, and the rejection of such a method, and the adoption of one more burdensome to the

insurance companies, violates its constitutional guarantees under the Fourteenth Amendment to the Constitution of the United States.

16. The court errs in holding (page 20 of opinion) that under the earned premium method, if $100,000 of insurance premiums were written on the last day of the test period, the effect of the respondents' method would be to include no part of the $100,000 as income during the test period, but to include $40,000 as expense of the test period. The court further errs in stating that "not one dollar of those premiums could be counted as an asset in the profits, but the $40,000 cost must be deducted as an expense on other business done." In fact, according to the earned premium method, and in accordance with Section 6222, R. S. 1919, one-half of such $100,000 would be treated as earned premium, namely, $50,000, which sum would enter into the test period as earned premium; and only a portion of the expense, namely the agents' commissions of approximately 20 per cent, or $20,000, would be charged in the expenses of the test period. The court in this instance has used by way of illustration a supposed case which is obviously not supported by the evidence or the applicable statute, but which is opposed to the uncontradicted evidence and the statute.

The expenses above the agency commission, such as taxes, overhead, etc., would not come against this premium income until after the test period. They would be incurred in the succeeding period during which the remainder of the pre-
[fol. 4080] mium would become earned, if no cancellations occurred.

17. The court errs (page 21 of opinion) in stating that "their entire business is conducted for the purpose of acquiring unearned premiums and nothing else." The purpose of the insurance business is to secure earned premiums, the earning of which is deferred during the period when the service has not been rendered, and, therefore, the unqualified right to the premium has not accrued.

18. The court errs in its opinion (page 28-B) in its conclusions that the rating act was a creation of insurance companies, and errs in permitting evidence of the approval by some company representatives of the law when enacted to

induce the holding that the matter was creative of an estoppel against the respondents herein.

19. The court errs (page 19 of opinion) in treating the position taken by the insurance companies who were plaintiffs in the surcharge case as creative in any way of an estoppel precluding these respondents from the right to have applied in this case a legal and proper method of computation of profit upon the earned premium basis. The position taken by the companies in the surcharge case was not an estoppel against the respondents here because (1) the parties there were not the same as the parties here; (2) the questions involved there were not the questions involved here; (3) the position of th plaintiff insurance companies in the surcharge case was not successfully maintained in that case; (4) the position taken in the surcharge case was not incon- [fol. 4081] sistent with the position taken in this case; and (5) the Superintendent of Insurance in the surcharge case was not prejudiced by the position taken by the insurance companies in that case, because it was more favorable than he was entitled to have. Therefore, there was no estoppel. (16 Cyc. 799; Ruling Case Law—Estoppel, Section 29.)

20. The opinion in treating the position taken by the plaintiffs in the surcharge case as an estoppel precluding the respondents here from the right to have adopted a proper method of calculation (to-wit, the earned premium method), is in direct conflict with a controlling decision (Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433, which was not heretofore called to the attention of this court), holding that a rate making body cannot substitute for a just and reasonable rate a lower rate, on the ground that the public utility was by its former conduct estopped from charging a reasonable rate.

The court errs in taking into consideration the interest on unearned premiums.

21. The court errs in its opinion (page 35) in taking all the written premiums for the test period and adding thereto the interest on unearned premiums as additional income. If all the premiums written are taken into account, as the court holds should be done, then they are all treated as earned, and there are in reality no unearned premiums whatever. The effect of the court's holding is to treat un-

[fol. 4082] earned premiums as if earned, and therefore to put them in the same category as capital and surplus. The court has held in its opinion that interest earnings from capital and surplus cannot be taken into account in a rate making tabulation (page 11 of opinion). Yet the court does take into account $2,301,132 interest on unearned premiums in its tabulation (page 35 of opinion).

The action of the court in holding that all the premiums should be considered as earned in calculating profit or loss, and yet adding as additional income the interest earnings on unearned premiums, is irreconcilably inconsistent. If all the premiums written (both earned and unearned) are to be taken into account, then there is no more reason for including in addition the interest on unearned premiums than there would be for taking into account the interest on capital and surplus. The court holds that the latter cannot be done (page 11 of opinion), yet at the same time it permits the former to be done (page 35 of opinion).

The holding of the court that all premiums should be considered as earned, and that therefore there are no unearned premiums, and the additional holding of the court that respondents are to be charged with interest on unearned premiums, as income, are inconsistent and self-destructive, and are oppressive, unjust and confiscatory, and deprive the respondents of their property without due process of law, and deny them the equal protection of the laws, in contravention of the first section of the Fourteenth [fol. 4083] Amendment to the Constitution of the United States.

22. The opinion herein takes into account and considers as a part of the respondents' income during the fire year test period, for ratemaking purposes, the interest earnings of respondents upon their unearned premiums during said period, in the sum of $2,301,132; and thereby the opinion considers as an element entering into the ascertainment of respondents' underwriting profit or loss the interest earnings derived from the investment of their funds, recognized by the opinion as being the property of respondents; and thereby the opinion applies interest earnings from invested funds of respondents to a reduction of the level of rates for underwriting, which is in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United

States, in that it deprives the respondents of their property and property rights without due process of law and denies them the equal protection of the laws; and said holding of the opinion is in this respect in conflict with the following controlling decisions by the Supreme Court of the United States:

Smyth v. Ames, 169 U. S., l. c. 540-141.
Minnesota Rate Case, 230 U. S. 352.
Northern Pacific Railway Co. v. North Dakota, 236 U. S., l. c. 595, 599.
Brooks-Scanlon Co. v. Railroad Co., 251 U. S. 396.
Vandalia Railroad Co. v. Schull, 255 U. S. 113.
Norfolk & Western Railway Co. v. Conley, 236 U. S. 605.
[fol. 4084] Interstate Commerce Commission v. Union Pacific, 222 U. S. 541-549.

23. The court errs in its opinion (page 28) in its consideration of unearned premium, in stating that it has not taken an account between the insurance company and the policy holder. The sole right of the State to regulate the business of underwriting is for protection of policy holders, and their relation to the insurance companies furnishes the sole basis for rate regulation and intervention.

The court errs in ascribing to the Superintendent of Insurance the power to exclude expenses which he may regard as unreasonable.

24. In paragraph VI, pages 33-34 of opinion, the court erroneously assumes that the Superintendent of the Insurance Department has the power, in making a tabulation preliminary to a reduction of rates, to reject such of respondents' expenses as he may deem unreasonable. The opinion upholds a similar assumption appearing in the rate reduction order here involved. This assumption and holding by the opinion are without any supporting authority or basis in the rating act (Secs. 6283-6284, R. S. 1919).

The asserted power of the superintendent to reject expenses which he may personally not regard as reasonable, invades the general inherent right of the respondent companies to conduct and manage their own business, and constitutes an unreasonable and confiscatory interference with respondents' inherent right of management thereof, and

[fol. 4085] thereby violates Section 1 of the Fourteenth Amendment to the Constitution of the United States in that respondents are thereby deprived of their property, property rights and liberty without due process of law and are denied the equal protection of the laws.

25. The rate reduction order and the opinion herein (page 35) deduct from the expenses of the respondents, for the purposes of the rate making tabulation, $2,496,715 excess commissions in St. Louis, $542,993 federal income tax allocated to Missouri, and $628,123 war tax on Missouri premiums. This is in the face of the undenied fact that such rejected expenses were actually incurred and paid by respondents during the five year test period, and that such expenses were a necessary part of the operating expenses of conducting respondents' business in the state of Missouri during the test period. The rejection of these expenses, and of each and every item thereof, is in direct violation of the provisions of Sections 6283-6284, R. S. 1919, which predicate the superintendent's power to reduce rates upon the actual experience of the five year test period. The rejection of these expenses and each item thereof is unreasonable and confiscatory, and deprives respondents of their property and property rights without due process of law, and denies them the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

26. The rejection of the items of expenses aforesaid is in direct conflict with a controlling decision (State of Missouri ex rel. Telephone Company v. Public Service Commission, [fol. 4086] 262 U. S., l. c. 288-289) holding that a state rate-making body cannot substitute its judgment for the honest discretion of the companies' directors respecting the necessity and reasonableness of operating expenses.

27. In paragraph IX of the opinion herein, the court holds that it is unnecessary to a decision of this cause to go into the question whether respondents' expenses for the test period were reasonable; and further holds in effect that the rating act in force at the time of the making of the rate reduction order in question (Sections 6283-6284 R. S. 1919) did not confer upon the Superintendent any power to pass upon the reasonableness of respondents' expenses when

ascertaining profit or loss preliminary to reducing rates. Yet in paragraph VI of the opinion, the court reaches a conclusion which is irreconcilable with the aforesaid holding in paragraph IX, by holding that $2,496,718 excess commissions paid by respondents to their agents in St. Louis were unreasonable and not properly chargeable as expenses in the rate making tabulation herein. And in paragraph X of the opinion, wherein the court summarizes its conclusions as to respondents' experience in the test period, the court deducts $2,496,715 excess commissions paid in St. Louis, as improper expenses, thereby reaching a conclusion which is irreconcilable and in conflict with the aforesaid holding in paragraph IX of the opinion.

The opinion, in refusing to give respondents credit for $2,496,718 excess commissions concededly incurred and paid as expenses, adopts a method of calculating underwriting profit which is unreasonable and fundamentally [fol. 4087] erroneous, and deprives the respondents of their property and property rights without due process of law and denies them the equal protection of the laws, in violation of Section 1 of the 14th Amendment to the Constitution of the United States; and thereby conflicts with controlling decisions by the Supreme Court of the United States, to-wit: Northern Pacific Railway Company v. Department of Public Works of Washington, 268 U. S. 39; Railway Co. v. Commission, 267 U. S. 359; Gas Co. v. McCall, 245 U. S. l. c. 348-349; Commission v. Railroad Co., 222 U. S. l. c. 547; Commission v. Railroad, 215 U. S. l. c. 470.

The court errs in excluding from consideration $2,496,718 of expenses actually incurred and paid by respondents as commissions to their St. Louis agents.

28. The court errs in holding in its opinion (page 33) that commissions in the sum of $2,496,718 paid in St. Louis ought to be eliminated from the expense computation because smaller commissions were paid through the remainder of the state. In so rejecting a portion of expense in fact incurred and paid, the court has overlooked the fact that the statute does not purport to delegate to the Superintendent of Insurance a revisory power respecting expenses, and has overlooked the controlling decision of the Supreme Court of the United States in Syler v. Louisville

& Nashville Railroad Company, 213 U. S. 175, and other cases appearing in brief of respondents, page 82, et seq.

[fol. 4088] 29. The court is inconsistent in its opinion (page 35) in stating that it does not discuss the question whether the unreasonableness of expenses may be considered (reserving such question for future consideration), yet in also holding in another portion of its opinion (pages 33-34) that $2,496,718 expenses by way of excess commissions actually incurred and paid must be excluded from consideration on the alleged ground that such expenses were unreasonable.

30. The court errs in its opinion (page 34) in its conjecture that if lesser commissions were paid to some agents "people would insure their property just the same." There is nothing in the record indicating that insurance, if written on a different basis than it was in fact done, would not be lost to competing mutual and reciprocal insurance companies or in part lost altogether, and this conjecture of the court has no support in the evidence.

The court errs in excluding from consideration $542,933 in Federal income taxes and $628,123 in war taxes on Missouri premiums actually incurred and paid by respondents.

31. The opinion erroneously holds that the sum of $542,933 Federal Income Tax, apportioned to Missouri, is not properly chargeable as an expense of respondents in the rate making tabulation, although it is conceded by the opinion and by the appellant that that amount was actually paid by respondents for such tax, as Missouri's proportion of said tax. The opinion in so holding is in conflict with con-[fol. 4089] trolling decisions of the Supreme Court of the United States (Galveston Electric Co. v. Galveston, 258 U. S. l. c. 399-400; Georgia Railway & Power Co. v. Railroad Commission of Georgia, 262 U. S. 633), holding that Federal income taxes are properly chargeable as operating expense in a rate making tabulation.

32. The opinion erroneously holds that the sum of $628,123 war tax paid on Missouri premiums is not properly chargeable as a part of respondents' expense, although the opinion states and the appellant concedes that the said sum was actually spent by respondents as a tax on Missouri pre-

miums during the five year test period. The opinion is, therefore, in conflict with controlling decisions by the Supreme Court of the United States (Galveston Electric Company v. Galveston, 258 U. S. l. c. 399-400; Georgia Railway & Power Co. v. Railroad Commission of Georgia, 262 U. S. 633).

33. The court errs in its opinion (page 34) in rejecting the item of expenses relating to federal taxes. The uncontradicted evidence shows that these expenses were actually incurred and paid by respondents. The court has overlooked the fact that the statute does not purport to delegate to the Superintendent of Insurance revisory power respecting expenses, and has overlooked the controlling decision of the Supreme Court of the United States in Syler v. Louisville-Nashville Railroad Co., 213 U. S. 175, and other cases appearing in respondents' brief, page 82 et seq.

The action of the court in rejecting the federal income tax is predicated upon the fact that respondents' figures showed "a net loss, so that no income tax was paid for Missouri"; [fol. 4090] yet the court in the concluding portion of its opinion holds that there was so great a profit in the state of Missouri that the decrease in rates was justified. Both these holdings cannot possibly be correct. If respondents made a profit and derived income in Missouri (as the opinion holds), then there cannot be any just ground for excluding the item of income tax.

34. The court errs in its opinion (page 34) in rejecting certain other taxes styled "War Taxes," in that the experience of the past five-year period is the only legal guide by which the court can measure the future; and the court may not legally assume or conjecture that during the ensuing period there would not be taxes as great or greater than the war tax imposed during the test period.

The court errs in taking into consideration the supposed future effect of the January, 1920, increase in rates.

35. The court, in arriving at the alleged profits of the respondents in Missouri during the five year test period, takes into consideration the supposed future effect of an increase in rates granted in January, 1920; and thereby the opinion is in direct conflict with the controlling statutes (Secs. 6283 and 6284, R. S. 1919). These statutes confine the inquiry

to a consideration only of the actual result of the respondents' earnings in this state for the five years 1917-1921 inclusive, and thereby forbid a consideration of the supposed effect, after such five year period, of any increase in rates granted during such period. Thereby the opinion adopts a method of calculation for rate making purposes which is [fol. 4091] speculative, conjectural, and fundamentally unsound and erroneous; and the opinion by the use of such fundamentally erroneous basis of calculation deprives respondents of their property without due process of law, and denies them the equal protection of the laws, in violation of the first section of the Fourteenth Amendment of the Constitution of the United States; and thereby the opinion is in conflict with a controlling decision of the Supreme Court of the United States, to-wit, Northern Pacific Railway Co. v. Department of Public Works of Washington, 268 U. S. 39.

36. In Paragraph X of the opinion, wherein the court summarizes its conclusions, the court, in attempting to arrive at the effect, in the years following 1921, of the increase granted in January, 1920, makes various calculations by way of division and multiplication, which calculations are unsupported by any evidence whatever in the record, and are speculative and conjectural; and thereby the court uses a method of calculation which is fundamentally erroneous and deprives respondents of their property without due process of law, and denies them the equal protection of the laws, in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and in conflict with a controlling decision, to-wit: Northern Pacific Ry. Co. v. Department of Public Works of Washington, 268 U. S. 39. [fol. 4092] The court erroneously departs from the standard fixed by the rating act.

37. The court errs (pages 36-37 of opinion) in indulging in speculations as to the future, which are unrelated to and have no basis in the actual experience of the statutory test period. The statute makes the actual experience of the test period the sole criterion. The opinion departs from this standard, and therefore violates the controlling statute (Sec. 6283, R. S. 1919).

38. The statute (Sec. 6283, R. S. 1919) authorizes a reduction of rates if "it appears that the result of the earn-

ings in this State of stock fire insurance companies for five years next preceding such investigation shows that there has been an aggregate profit therein in excess of what is reasonable." The opinion permits and authorizes the Superintendent of Insurance, in fixing a level of rates for the future, to reject this standard fixed by statute, and to anticipate possibilities for the future instead of being controlled, as the statute provides, by the standard of the past. The opinion furthermore permits the superintendent to substitute in place of the statutory standard, the superintendent's individual notions as to the manner in which respondents should transact their business, as stated at length in the rate reduction order. The power thus ascribed to the superintendent by the opinion is an arbitrary invasion of respondents' rights of property, and deprives them of the right to conduct their business and affairs according to their own judgment, substituting therefor the unregulated judgment of the superintendent; and deprives the respondents of the liberty of conducting their [fol. 4093] business according to their own judgment, and deprives them of their property without due process of law, and denies them the equal protection of the laws, all in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

39. The court errs in its opinion in substituting in place of the standard fixed by the statute (to-wit, the actual experience of a five year elapsed period), speculations and conjectures respecting the future, and in assuming that there would in the future be no war tax or any other tax similar in amount, and in leaving the matter of estimating respondents' future profit and fixing a level of rates to the untrammeled judgment of the Superintendent of Insurance without any guide or standard; whereby the right of the respondents to manage and conduct their own business is impaired. They are thereby deprived of the liberty of conducting their own business, contrary to the guarantees of the Constitution of the United States and the first section of the Fourteenth Amendment thereto.

The Court errs in taking into consideration the respondents' profits outside the State of Missouri in determining upon the level of rates to be charged within the State of Missouri.

40. The opinion herein holds that for the purposes of this case consideration may be given to respondents' earnings, profits and dividends to stockholders from the conduct of their business in the nation at large; and that respondents' transactions outside the State of Missouri may there- [fol. 4094] fore be taken into consideration as bearing upon the fixing of reasonable insurance rates to be charged in the State of Missouri. Such holding is in direct conflict with Sec. 6283, R. S. 1919, which expressly limits the inquiry to respondents' earnings within the State of Missouri. Such holding also results in depriving respondents of their property without due process of law and in denying them the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. Such holding is likewise in conflict with a controlling decision of the Supreme Court of the United States in the case of Fidelity & Deposit Company of Maryland v. Tafoya, 46 Sup. Ct. Rep. 331, and said decision not having heretofore been called to the attention of this court. Such holding is also in conflict with the following controlling decisions:

Smyth v. Ames, 169 U. S., l. c. 540, 531.
Minnesota Rate Case, 230 U. S. 352.
Northern Pacific Railway Co. v. North Dakota, 236 U. S. 585, l. c. 595.
Brooks Scanlon Co. v. Railroad Commission, 251 U. S. 396.
Vandalia R. Co. v. Schull, 255 U. S. 113.
Norfolk & Western Ry. Co. v. Conley, 236 U. S. 605.
Interstate Commerce Com. v. U. P. R. R. Co., 222 U. S. 541-549.

[fol. 4095] Even on the face of the figures adopted by the court, the rate reduction is unjustified.

41. Upon the face of the figures summarized in the opinion (page 35), purporting to represent the respondents' profit in Missouri during the five year test period, it is manifest that the reduction in rates directed by the rate reduction order and approved by the opinion herein will wipe out all profit and compel the respondents to do business in Missouri without a reasonable profit, or any profit, and at rates of premium which are unjust, unreasonable and con-

fiscatory, as a result of which respondents will be deprived of their property and property rights without due process of law and denied the equal protection of the laws, in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

42. Upon the face of said figures, the opinion herein holds (page 35) that respondents' total income in the State of Missouri during the five year test period was $85,803,313, and that respondents' actual net earnings were $8,681,964, from which said findings (assuming them to be correct) it is manifest that the 10% reduction effected by the rate reduction order would compel respondents to do business in Missouri for less than the eight per cent held by the opinion to be a reasonable percentage of profit to respondents.

43. The court errs in its opinion (page 35) in holding that the actual net earnings of respondents during the test period were $8,681,964, and that this warranted the Superintendent of Insurance in making a 10% rate reduction amounting to $8,350,218.

[fol. 4096] Miscellaneous statements and findings in the opinion which are unsupported by any evidence or are opposed to the undisputed evidence.

44. The court in its opinion (page 5) states that the underwriting reports by classes filed by respondents with the Superintendent of Insurance, upon which he reached his conclusion, "were incorrect in many respects, although sworn to by the several companies," and furnished to the insurance superintendent "for the purpose of furnishing him information upon which he might act in such a case as this," and that they were "entirely untrustworthy." As the court has phrased this portion of its opinion, it leaves the inference that the respondents have sworn falsely or are untrustworthy in their reports to the state, which is entirely unsupported by the record. It is undisputedly shown by the record that the discrepancies in such reports were caused by the misleading form of the blanks furnished by the insurance department, and that they were so obscure and misleading that various bases were adopted in answering the same through justifiable confusion on the part of the insurance companies. We call attention to the respondents' supplemental brief, pages 8 and 9, where this

subject is discussed in detail and references given to the appropriate paging of the abstract.

The court is also in error in this particular in assuming that these are statutory forms of report. Such is not the case. The court is also in error in its assumption that these reports were required by statute for the purpose of furnishing the insurance superintendent information on which [fol. 4097] he might act in a case like this. The classes embraced in the reports cover only a portion of the business of respondents in the state and not all of it, and therefore could not possibly form a proper predicate upon which to determine the "aggregate profits" of the respondents during the test period.

45. The court avers in its opinion in its statement that the evidence showed that the companies "made enormous profits during the period under investigation and paid large dividends." All the evidence of supposed profits and dividends made by the companies on their business nation-wide was objected to upon the trial, its consideration eliminated by the referee in coming to his conclusions, and the evidence is not properly for consideration by this court. Whether the defendant paid large dividends or none at all, or made enormous profits or none at all, upon their nation-wide business or business derived from foreign countries are matters, the taking into account of which the court proceeds in violation of the declaration of the Supreme Court of the United States in the case of Fidelity & Deposit Company of Maryland v. Tafoya, 46 Sup. Ct. Rep. 331, wherein the Supreme Court of the United States held that the undertaking by a state to exercise power over the activities or doings of foreign corporations beyond its boundary transcends its powers.

The court, in its consideration of this question and in styling respondents' profits as "enormous," has overlooked the undisputed evidence in the record that the total of the cash dividends paid during the period in question by all of [fol. 4098] the respondents was only 6.39% of their capital and surplus (Abs. 2028, brief of respondents, page 262). Such dividends cannot justly be characterized as "enormous."

The court further erred in taking the supposed nation-wide profits and dividends into account, because in so do-

ing, the court has of necessity taken into account earnings and income from investments, and in so doing and permitting such matters to affect the judgment herein, the court has proceeded upon a fundamentally erroneous basis and deprived the respondents of their property without due process of law, in contravention of Section 1 of the 14th Amendment of the Constitution of the United States.

46. The court errs in its opinion (page 11) in its recital of the investments of respondents in reciting them as "government, state and municipal bonds, etc."; in its recital that such securities "bear low rates of interest" and in its recital that "they are the safest, though the least remunerative methods of investment"; in assuming that there was any evidence in the record that the respondents invested their funds exclusively in the types of securities mentioned. As a matter of fact the evidence discloses that the respondents also had investments in stocks and other forms of sound securities. The court erred in assuming that there was any evidence of the nature of the investments of all the respondents, whereas there was no evidence thereof in the record and could not with propriety be any.

47. The court errs in its opinion (page 11) after stating the nature of the supposed investments of the respondents, [fol. 4099] in stating: "Yet the plaintiffs insist, that notwithstanding the large aggregate of profits of the companies, their underwriting business results in a serious loss, and these profits occur notwithstanding such loss." Plaintiffs never have asserted that their underwriting business throughout the country resulted in serious loss during the period in question, nor would any issue as to their underwriting experience outside of the State of Missouri have been in anywise competent, nor was there any evidence offered by either of the parties upon that issue.

48. The court errs in that it states in the opinion (page 12): "We are not pointed to any evidence where this loss (suffered in Missouri) was made up in other states by higher insurance rates than were paid here." The inference from this portion of the opinion is that the court believes that insurance profits in the remainder of the United States did not differ materially from those in Missouri; that at least such profits were not materially greater in

other states. In so assuming, the court is not in any way confirmed by the record. There is no evidence in the record of the experience in other states, and the assumption by the court that a profitable experience in other states might be derived only "by higher insurance rates than were paid here" overlooks the fact that a profit in other states, even upon the same rates, might well be derived, as opposed to unprofitable business here, by lesser losses in such other states. The evidence in this case is without contradiction that Missouri comparatively with other states of the union [fol. 4100] is an unprofitable state to insurance companies; that the relation of losses to premium income is higher in Missouri than elsewhere. The assumption of the court that this difference could come only because of "higher insurance rates" elsewhere is not borne out by the record, and overlooks the overwhelming effect of the difference in loss experience.

As illustrative of what we have just said we have printed in the appendix to this motion a statistical table giving a comparative statement of the average rates and average losses in the several states during various periods. This table is published in The Weekly Underwriter, issue of May 1, 1926. The figures there show how far the losses in Missouri exceed the losses in three-fourths of the other states of the Union.

49. The court errs in drawing conclusions from the increase of assets of insurance companies "before the test period began" and drawing the conclusion therefrom that "it is incredible that the large profits could come from investments" (page 13 of opinion). It is a matter of no materiality in the case where the accumulations of the companies before the test period came from; nor has it been contended, nor is there any evidence, that profits had not been derived nation-wide from underwriting. The source of profits of respondents beyond the boundaries of the State of Missouri, and before the test period in question, are foreign to any proper issue in the case, and the conclusions of the court therefrom to the disadvantage of respondents are legally unwarrantable conclusions.

[fol. 4101] 50. The court errs in its inference that the increase of capital was "probably due to the formation of

new companies" (page 14). There is no evidence in the record to support such assumption or inference.

51. The court errs in its conclusion respecting the relative earnings of the respondents from investments and from underwriting. At page 15 of the opinion the court says:

"Thus about three-fourths of all the earnings of the plaintiffs were underwriting earnings."

This statement is entirely unsupported by the evidence in the case and is contrary thereto. The undisputed evidence in the record shows that the investment earnings of insurance companies were during the test period (and invariably always are) largely in excess of their underwriting earnings. There is no evidence in the record having any tendency to prove the contrary. This is a fact of the most wide-spread common knowledge also, as available statistics demonstrate. It is perfectly apparent that the learned writer of the opinion has reached a conclusion as to this matter which is not only opposed to the evidence, but to common knowledge as well.

52. The court erred in holding in its opinion (page 22) that the possibility of cancellation of policies is so remote as to be negligible. The uncontradicted evidence in the case is that cancellations occur to the extent of about 20% or 25% of all premiums written. This is conceded by appellant's witness McGee (Abstract 3051).

[fol. 4102] **In Conclusion**

We earnestly feel that the result reached by this Honorable Court in this most important case, if allowed to stand, will result in a grievous injustice to the insurance companies doing business in the State of Missouri. The transcendent importance of the litigation is shown by the fact that, as found by the Referee (Abstract 3655) the amount represented by the difference between the existing rates and the reduced rates, during the pendency of the litigation, is over seven millions of dollars. This sum, therefore, is the amount involved in this important case.

In order to sustain the rate reduction order, the majority opinion adopts the written premium basis and rejects the

earned premium basis, in the face of the fact that the only two courts of last resort which have passed upon the question have decided it the other way (Bullion v. Aetna Insurance Co., 151 Ark. 519, 237 S. W. l. c. 718; Sun Insurance Office v. Clark [House of Lords] App. Cases, Law Reports 1912, page 443); and in spite of the finding by the National Convention of Insurance Commissioners that underwriting profit must be ascertained upon the earned premium method; in spite of the fact that by the statutes of Missouri the companies are required, out of every premium received, to set up an unearned premium reserve (Section 6222, R. S. 1919), and are forbidden to pay dividends out of unearned premiums (Section 6333, R. S. 1919); in spite of the further fact that the rating act itself limits the ascertainment of profit or loss to an ascertainment of the "earnings" (this [fol. 4103] language being entirely inconsistent with the notion that the unearned portion of the premium can be treated as an earning or profit); in spite of the fact that each of the forty-eight states in the Union, including Missouri, require an annual statement of underwriting experience upon the earned premium basis; and in spite of the fact that Congress has adopted the earned premium basis as the proper method of ascertaining insurance companies' profit or loss for the purposes of the income tax.

It seems inconceivable that a method in common use in the insurance world from a time when the memory of man runneth not to the contrary, a method approved and adopted in each of the forty-eight states, a method adopted as proper by Congress, and by the only courts which have ever passed upon the question, can be denounced and rejected as "utterly indefensible" (page 22 of opinion).

But, beyond all that, we earnestly submit that even upon the written premium method adopted by the opinion, the reduction order cannot be sustained. We call to the attention of the court that it is only by the rejection of $2,496,715 of excess commissions in St. Louis, and by the rejection of $542,993 Federal income tax, and by the rejection of $628,123 war tax on premiums, and by the speculative assumption as to the probable future effect of the January, 1920, increase, that the 10% reduction can be even colorably justified, and that too by the narrowest of margins.

If the court's findings and conclusions as to a single one of these items be erroneous, then the whole structure upon which the opinion is predicated falls to the ground. For [fol. 4104] example, if $2,496,715 excess commissions in St. Louis be included as expenses instead of rejected, then the result reached by the opinion is demonstrably wrong. Again, if $628,123 war tax on Missouri premiums be charged as expense instead of rejected, then the result reached by the opinion is demonstrably wrong. Why? Because with either of these items included as expense, the amount of profits derived (even on the written premium basis) is so low that the 10% reduction would obviously wipe it all out and leave a profit of less than 8 per cent, which is agreed upon by the parties, and fixed by the court as a reasonable profit.

We, therefore, desire to stress and lay emphasis upon the point that it is only by the adoption of the written premium basis, and the exclusion of each and every item of expense rejected by the court, and by indulgence in speculative conjecture as to the probable future effect of the January, 1920, increase, that the 10% reduction order can be even ostensibly justified.

As a matter of fact, there is no logical reason for the rejection of any of the items of expense rejected by the court. A clear injustice in the rejection of the federal income tax item appears in the fact that the court rejects it on the ground that the companies claim to have made no profit in Missouri during the test period, yet by the result of the opinion, the court finds that the companies earned more than $14,000,000 of profit in Missouri. In other words, in one breath the opinion finds that the companies earned $14,000,000 of profit; in the next breath, an item of $542,933 expense is rejected and thrown out of the cal- [fol. 4105] culation, on the ground that the companies claim they earned no profit. We submit that it is utterly impossible to justify the rejection of this item.

The rejection of the other items of expense will, on careful analysis, be found to be equally without logical support.

We desire to submit this one further thought, in conclusion: The majority opinion (page 37) finds that after applying the 10% reduction, the companies made $7,287,209. The majority opinion likewise finds (page 36) that the com-

panies were entitled to make, as a reasonable profit, the sum of $6,680,169. Therefore the profit which the opinion says they would have earned, with the 10% reduction applied, is only $607,035 in excess of the amount which the opinion says would have been a reasonable profit.

Therefore, it becomes manifest that if, on reconsideration of this case the court finds that any single item of expense has been improperly rejected, or any item of income improperly added, by the majority opinion, sufficient in amount to exceed $607,035, then it is mathematically indisputable that the majority opinion cannot stand.

So it becomes manifest upon what a slender thread the majority opinion depends.

We earnestly submit that the ends of justice can only be subserved by a reargument of this case and by a reconsideration of the extremely important questions involved.

Wherefore, for all of the reasons heretofore assigned, respondents respectfully move that the court set aside the [fol. 4106] order, judgment and opinion heretofore rendered herein, and grant to the respondents a rehearing of this cause.

Respectfully submitted, Hicks & Folonie, Hogsett & Boyle, Leahy, Saunders & Walther, Cockrill & Armistead, Attorneys for Respondents.

[fol. 4107] APPENDIX

The following statistical table is taken from The Weekly Underwriter, issue of May 1, 1926, and is submitted as illustrative of the point made by respondents in paragraph 48 of their motion for rehearing:

	1925	1924	1920-24	1910-19
Alabama:				
Average rate	1 43	1 29	1 43	1 62
Losses paid, per cent	61 0	57 2	55 1	59 2
Arizona:				
Average rate	1 70	1 39	1 20	2 12
Losses paid, per cent	42 6	42 7	52 7	41 7
Arkansas:				
Average rate	1 49	1 46	1 49	1 63
Losses paid, per cent	74 1	79 5	67 6	65 1

	1925	1924	1920-24	1910-19
California:				
Average rate	1 12	1 15	1 26	1 41
Losses paid, per cent	42 1	50 3	44 1	36 1
Colorado:				
Average rate	1 08	1 18	1 16	1 43
Losses paid, per cent	42 3	45 1	45 0	35 6
Connecticut:				
Average rate	0 85	0 89	0 91	0 95
Losses paid, per cent	42 7	46 9	41 9	41 2
Delaware:				
Average rate	0 69	0 68	0 71	0 82
Losses paid, per cent	40 1	60 4	77.9	49 5
District of Columbia:				
Average rate	0 63	0 63	0 66	0 59
Losses paid, per cent	34 7	37 1	36 1	38 5
Florida:				
Average rate	1 49	1 56	1 60	1 80
Losses paid, per cent	29 1	34 0	37.3	42 3
Georgia:				
Average rate	1 21	1 16	1 27	1 39
Losses paid, per cent	59 5	58 3	64 4	58 4
Idaho:				
Average rate	1 58	1 69	1 71	1 86
Losses paid, per cent	44 7	63 0	56.3	52 1
Illinois:				
Average rate	0 98	0 98	0 94	1 11
Losses paid, per cent	55 3	53 3	52 3	48 6
Indiana:				
Average rate	0 94	0 93	0 96	0 99
Losses paid, per cent	59 2	61 0	52 8	49 2
Iowa:				
Average rate	1 03	1 06	1 10	1 15
Losses paid, per cent	60 2	54 6	54 7	56 3
[fol. 4108] Kansas:				
Average rate	1 11	1 07	1 13	1 17
Losses paid, per cent	48 6	55 8	47.6	55 2

	1925	1924	1920-24	1910-19
Kentucky:				
Average rate	1 07	1 12	1 25	1 26
Losses paid, per cent	70 7	84 7	65 4	52 7
Louisiana:				
Average rate	1 16	1 13	1 19	1 33
Losses paid, per cent	68 0	71.6	59 8	44 1
Maine:				
Average rate	1 39	1 40	1 40	1 48
Losses paid, per cent	59 6	57 0	49 7	55 2
Maryland:				
Average rate	0 88	0 91	0 94	0 95
Losses paid, per cent	44 1	40 5	51.4	44 4
Massachusetts:				
Average rate	0 89	0 92	0 94	0 98
Losses paid, per cent	58 1	66 8	53 2	55 2
Michigan:				
Average rate	0 83	0 87	0 90	1 01
Losses paid, per cent	61.6	65 1	55 2	57 5
Minnesota:				
Average rate	1 02	1 00	1 04	1 15
Losses paid, per cent	61 2	67 4	58 5	64 1
Mississippi:				
Average rate	1 77	1 67	1 68	1 89
Losses paid, per cent	88 6	90 7	57.5	56 5
Missouri:				
Average rate	1 00	1 01	1 01	0 92
Losses paid, per cent	61 6	62 6	59 5	63 1
Montana:				
Average rate	1 51	1 47	1 74	2 04
Losses paid, per cent	58.4	44 5	53 6	46 6
Nebraska:				
Average rate	0 98	0 95	1 03	1 19
Losses paid, per cent	50 8	54 5	59 6	52 3
Nevada:				
Average rate	1 81	2 00	1 95	2 09
Losses paid, per cent	31 8	50 3	45.7	45 3

	1925	1924	1920-24	1910-19
New Hampshire:				
Average rate	1 29	1 31	1 24	1 23
Losses paid, per cent	48 9	50 7	65 3	52 8
New Jersey:				
Average rate	0 86	0 89	0 90	0 91
Losses paid, per cent	51.3	47 0	47 8	52 8
[fol. 4109] New Mexico:				
Average rate	1 32	1 34	1 42	1 48
Losses paid, per cent	47 4	47 0	53 2	46 1
New York:				
Average rate	0 72	0 72	0 74	0 73
Losses paid, per cent	56 2	53 4	54 6	48.2
North Carolina:				
Average rate	1 10	0 90	1 07	1 12
Losses paid, per cent	55 6	55 3	53 5	46 9
North Dakota:				
Average rate	1 51	1 42	1 46	1 83
Losses paid, per cent	42 1	52 8	65 1	60 7
Ohio:				
Average rate	0 76	0.74	0 95	0 79
Losses paid, per cent	53 6	46 9	48 1	41 2
Oklahoma:				
Average rate	1 20	1 23	1 31	1 32
Losses paid, per cent	63 3	54 1	54 4	49 3
Oregon:				
Average rate	1 40	1 45	1 40	1 44
Losses paid, per cent	45 2	66 1	64 5	46 5
Pennsylvania:				
Average rate	0 95	0 99	1 01	1 02
Losses paid, per cent	45 7	40 1	44 9	43 8
Rhode Island:				
Average rate	0 87	0.88	0 83	0 92
Losses paid, per cent	52 6	61 6	57 7	53 8
South Carolina:				
Average rate	1 15	1 15	1 16	1 26
Losses paid, per cent	60 7	49 4	55 8	51 8

	1925	1924	1920-24	1910-19
South Dakota:				
Average rate	1 29	1 36	1 35	1 42
Losses paid, per cent	41 9	55 9	57 3	49 1
Tennessee:				
Average rate	1 23	1 30	1 35	1 31
Losses paid, per cent	70 9	64 9	58 5	54 6
Texas:				
Average rate	1 32	1.23	1 29	1 40
Losses paid, per cent	65 3	65 4	62 6	62 8
Utah:				
Average rate	1 08	1 03	1 02	1 15
Losses paid, per cent	61 1	39 7	53 7	44 4
Vermont:				
Average rate	1 26	1 27	1 26	1 35
Losses paid, per cent	68 5	54 3	44 8	52 0
[fol. 4110] **Virginia:**				
Average rate	1 11	1 13	1 20	1 30
Losses paid, per cent	57 1	51 6	49 7	48 1
Washington:				
Average rate	1 39	1.47	1 52	1 59
Losses paid, per cent	55 0	56 6	46 0	46 6
West Virginia:				
Average rate	1 27	1 31	1 27	1 39
Losses paid, per cent	70 9	77 1	56 9	52 0
Wisconsin:				
Average rate	0 87	0 84	0 89	1 06
Losses paid, per cent	64 7	65 7	59 3	42 0
Wyoming:				
Average rate	1 23	1 29	1 41	1 75
Losses paid, per cent	46 3	34 6	43 8	38 3

[fol. 4111] And thereafter, to wit, on June 23, 1926, the following further proceedings were had and entered of record in said cause:

SUPREME COURT OF MISSOURI

[Title omitted]

ORDER OVERRULING MOTION FOR REHEARING—Filed June 23, 1926

"Now, at this day, the court having considered and fully understood the motion heretofore filed by the said respondents for a rehearing herein, doth order that said motion be, and the same is hereby, overruled. Blair, C. J., and Ragland, J., dissent."

And thereafter, to wit, on June 24, 1926, the following proceedings were had and entered of record in said cause:

[fol. 4112] SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

ORDER GRANTING STAY OF EXECUTION—Filed June 24, 1926

Now on this 24th day of June, 1926, come the respondents in this cause and file herein their application for a stay, for a reasonable time, of the execution and enforcement of the judgment rendered by this court herein, to enable the respondents to apply for and to obtain a writ of certiorari from the Supreme Court of the United States to review said judgment.

And said application being now fully considered, is by the Honorable R. F. Walker, a judge of this court, sustained, and it is now by said judge ordered that the execution and enforcement of the judgment rendered by this court herein be, and the same is now, stayed for a period of nine months from this date, to enable the respondents to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, to review said judgment; provided, however, respondents shall file here within five days from this date their bond, in the amount of ten thousand dollars with

good and sufficient security, to be approved by said judge of this Court, that if the respondents fail to make applica-
[fol. 4113] tion for such writ of certiorari within the time allotted therefor, or fail to obtain an order granting their application, or fail to make their plea good in the Supreme Court of the United States, they shall answer for all damages and costs which the appellant may sustain by reason of said stay.

And now on the same day come the respondents and file herein their bond in the sum and in form, and with the conditions and security aforesaid, which bond is now by said judge of this court approved; whereupon it is ordered by the said judge that the aforesaid stay is now effective.

(Signed) R. F. Walker, Acting Chief Judge Supreme Court of the State of Missouri.

[fol. 4114] Supreme Court of Missouri en Banc

[Title omitted]

Respondents' Præcipe—Filed June 28, 1926

To the Honorable J. D. Allen, Clerk of the Supreme Court of Missouri:

You are hereby requested to make and transmit to the Supreme Court of the United States, under your hand and and the seal of the Supreme Court of Missouri, a transcript of the record in the above entitled cause (upon the filing of which transcript the respondents in said cause will file in the Supreme Court of the United States a petition for a writ of certiorari to review the opinion and judgment of the Supreme Court of Missouri in said cause); and you are further requested to incorporate into such transcript the following portions of the record in said cause:

1. Certified copy of judgment of Circuit Court of Cole County, and of order allowing appeal.

And the following portions of appellant's abstract of record:

2. From top of page 1 to 17th line of page 65, inclusive.
[fol. 4115] 3. From 6th line on page 71 to 9th line on page 88, inclusive.

4. Pages 126 to 144 inclusive.
5. From 23rd line on page 151 to bottom of page 167, inclusive.
6. First 4 lines on page 168.
7. From top line on page 171 to 13th line on page 189, inclusive.
8. From 25th line on page 193 to 11th line on page 284, inclusive.
9. From 6th line on page 289 to next to last line on page 291.
10. Exhibit 1 (page 10 of annual statement blank).
11. From top line of page 292 to 5th line from bottom of page 305, inclusive.
12. From 4th line from bottom of page 314 to 20th line from top of page 384, inclusive.
13. From top line of page 423 to bottom line of page 424, inclusive.
14. From 6th line on page 429 to 6th line from bottom of page 430, inclusive.
15. From 17th line on page 432 to end of page 435, inclusive.
16. From 3rd line on page 439 to 8th line on page 440, inclusive.
17. From 2nd line from bottom of page 443 to 4th line from top of page 626, inclusive.
18. From 8th line from bottom of page 651 to 7th line from bottom of page 652, inclusive.
[fol. 4116] 19. From 9th line on page 654 to 9th line on page 655, inclusive.
20. From 4th line on page 662 to 11th line from bottom of page 760, inclusive.
21. From 10th line from bottom of page 789 to 3rd line from top of page 791, inclusive.
22. From 4th line from bottom of page 929 to end of page 1037, inclusive.
23. From top line of page 1043 to 7th line from bottom of page 1361, inclusive.
24. Exhibit 798.
25. From 4th line from bottom of page 1361 to 3rd line from top of page 1515, inclusive.
26. From 3rd line from bottom of page 1516 to end of page 1729, inclusive.

27. From 8th line from bottom of page 1730 to 5th line from top of page 1923, inclusive.

28. Pages 1, 2, 3, 4, 5, 7, 9, 10 and 11 of Exhibit 802 (annual statement of Home Insurance Company).

29. From 3rd line from bottom of page 1924 to 18th line on page 1989, inclusive.

30. From 11th line on page 1991 to 10th line from bottom of page 2017, inclusive.

31. From 7th line from top of page 2022 to 9th line from bottom of page 2030, inclusive.

32. From 3rd line from bottom of page 2031 to 6th line from top of page 2082, inclusive.

33. From 6th line from bottom of page 2083 to 4th line from bottom of page 2371, inclusive.

[fol. 4117] 34. From 14th line on page 2463 to 14th line from top of page 2477, inclusive.

35. From 15th line from top of page 2553 to last line on page 2566, inclusive.

36. From 2nd line from bottom of page 2568 to 4th line from top of page 2571, inclusive.

37. Exhibit 1082.

38. From 7th line on page 2571 to 22nd line on page 2571, inclusive.

39. Exhibit 1083.

40. From 5th line on page 2571 to 8th line on page 2572, inclusive.

41. Exhibit 1084.

42. From 11th line on page 2572 to 23rd line on page 2572, inclusive.

43. Exhibit 1085.

44. From 4th line from bottom of page 2572 to 9th line from top of page 2573, inclusive.

45. Exhibit 1086.

46. From 12th line from top of page 2573 to 9th line from top of page 2701, inclusive.

47. From 15th line from top of page 2710 to 11th line from top of page 2776, inclusive.

48. From 9th line from bottom of page 2782 to 6th line from bottom of page 2805, inclusive.

49. From 3rd line from top of page 2806 to 5th line from top of page 2836, inclusive.

50. From 18th line from top of page 2848 to 16th line from top of page 2850, inclusive.

51. Exhibit 1348.

[fol. 4118] 52. From 19th line from top of page 2850 to 15th line from top of page 2851, inclusive.

53. Exhibit 1349.

54. From 18th line from top of page 2851 to 24th line on said page, inclusive.

55. Exhibit 1350.

56. From 5th line from bottom of page 2851 to 2nd line from top of page 2852, inclusive.

57. Exhibit 1351.

58. From 5th line from top of page 2852 to 11th line on said page, inclusive.

59. Exhibit 1352.

60. From 14th line from top of page 2852 to 21st line on said page, inclusive.

61. Exhibit 1353.

62. From 7th line from bottom of page 2852 to 9th line from top of page 2907, inclusive.

63. Exhibits numbered 1354, 1354A and 1354B.

64. Exhibits numbered 1355, 1355A and 1355B.

65. Exhibits numbered 1356, 1356A and 1356B.

66. Exhibits numbered 1357, 1357A and 1357B.

67. Exhibits numbered 1358, 1358A and 1358B.

68. Exhibit 1359.

69. From 11th line from top of page 2907 to 13th line from top of page 2916, inclusive.

70. Exhibit 1360.

71. From the 15th line from top of page 2916 to 2nd line from bottom of page 2920, inclusive.

72. Exhibit 1361.

73. From top line on page 2921 to 2nd line from top of page 2923, inclusive.

[fol. 4119] 74. Exhibit 1362.

75. From 4th line from top of page 2923 to 5th line from top of page 2928, inclusive.

76. Exhibits 1363, 1363A and 1363B.

77. Exhibits 1364, 1364A and 1364B.

78. Exhibits 1365A and 1365B.

79. Exhibits 1366, 1366A and 1366B.

80. Exhibit 1367, 1367A and 1367B.

81. From 7th line from top of page 2928 to 8th line from top of page 3291, inclusive.

82. Exhibit 2027.
83. Exhibit 2028.
84. Exhibit 2029.
85. From 15th line from top of page 3291 to 20th line from top of page 3295, inclusive.
86. Exhibit 2030.
87. From 7th line from bottom of page 3295 to 17th line from top of page 3333, inclusive.
88. Exhibit 2031.
89. From the 20th line on page 3333 to 6th line from top of page 3338, inclusive.
90. Exhibit 2032.
91. From 10th line from top of page 3338 to 16th line from top of page 3345, inclusive.
92. Exhibit 2033.
93. From 20th line from top of page 3345 to 2nd line from top of page 3347, inclusive.
94. Exhibit 2034.
95. From 6th line from top of page 3347 to 16th line from top of page 3662, inclusive.
[fol. 4120] 96. From 7th line from bottom of page 3666 to 5th line from top of page 3711, inclusive.

And the following portions of the printed statement, brief and argument for respondents on file in said cause.

97. From the 17th line on page 29 to the 15th line on page 33, inclusive.
98. From the 10th line from the top of page 100 to the 11th line from the top of page 103, inclusive.
99. From the 9th line from the top of page 113 to the 7th line from the bottom of page 114, inclusive.

And the following record entry:

100. The entry of record under date of May 11, 1925 showing argument and submission of the cause.

And the following portion of respondents' supplemental brief filed in said cause:

101. From the top line of page 20 to the 6th line from top of page 23, inclusive.
102. From the 5th line from top of page 30 to the end of page 36, inclusive.

[fol. 4121] And the following proceedings in said cause:

103. The judgment of the Supreme Court of Missouri entered on May 21, 1926.

104. The majority opinion in said cause.

105. The entry showing filing of dissenting opinion on May 26, 1926,

106. The dissenting opinion in said cause.

107. The entry showing filing of motion for rehearing by respondents on May 28, 1926.

108. Respondents' motion for rehearing.

109. The entry of June 23, 1926 containing order overruling motion for rehearing.

110. The order made by the acting Chief Justice of said court on June 24, 1926 granting a stay of the execution and enforcement of the judgment of the Supreme Court of Missouri to allow respondents time to apply for writ of certiorari to Supreme Court of United States.

111. This præcipe.

112. The præcipe (if any) hereafter filed by appellant.

Dated June 26, 1926.

(Signed) Hicks & Folonie, Hogsett & Boyle, Leahy, Saunders & Walther, Cockrill & Armistead, Attorneys for Respondents.

Service of a copy of the foregoing præcipe is hereby acknowledged to have been made upon us this 26th day of June, 1926.

(Signed) Floyd E. Jacobs, John T. Barker, Attorneys for Appellant.

[fol. 4122] SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

RESPONDENTS' SUPPLEMENTAL PRÆCIPE—Filed June 30, 1926

To the Honorable J. D. Allen, Clerk of the Supreme Court of Missouri:

In addition to the portions of the record in above cause called for in respondents' præcipe heretofore filed herein, you are respectfully requested to incorporate into the transcript of the record to be filed in the Supreme Court of the United States, immediately following the matter appearing in the eleventh line on page 3396 of appellant's abstract of the record, the following portions of Exhibit 2035 (Abstract of the record in case of State ex rel. v. Harty):

1. From page 1 of said Exhibit 2035 to page 553, inclusive.

2. From page 5 to page 128 of the appendix to said exhibit, inclusive.

(Signed) Hicks & Folonie, Leahy, Saunders & Watlher, Cockrill & Armistead, Hogsett & Boyle, Attorneys for Respondents.

Service of this supplemental præcipe is hereby acknowl-
[fol. 4123] edged this 29th day of June, 1926.

(Signed) Floyd E. Jacobs, John T. Barker, Attorneys for Appellant.

[fol. 4124] IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

APPELLANT'S PRÆCIPE—Filed July 3, 1926

To the Honorable J. D. Allen, Clerk of the Supreme Court of Missouri:

You are hereby requested to make and transmit to the Supreme Court of the United States, under your hand and the seal of the Supreme Court of Missouri, a tran-

script of the record in the above entitled cause, not called for by respondents, and we request that you incorporate into such transcript the following portions of the record in said cause:

1. All of pages 204 and 205.
2. From the 26th line of page 597 to and including the 11th line on page 598 of Exhibit 2035, abstract of the record in the case of State ex rel. vs. Harty.

And the following portions of the printed statement, brief and argument for appellant on file in said cause:

3. From the 25th line on page 31 to page 35 inclusive.
4. From the 24th line on page 254 through page 258 inclusive.
5. Also Defendant's Exhibits 2031, 2037, 2038, 2039, 2040 [fol. 4125] and 2042.
6. This præcipe.

Date July 2nd, 1926.

John T. Barker, Floyd E. Jacobs, Attorneys for Appellant.

Service of a copy of the foregoing præcipe is hereby acknowledged to have been made upon us this 2nd day of July, 1926.

Hicks & Folonie, Hogsett & Boyle, Leahy, Saunders & Walther, Cockrill & Armistead, Attorneys for Respondents.

[fol. 4126] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. —. Missouri Supreme Court. Term No. —. Aetna Insurance Company, Agricultural Insurance Company, Alliance Insurance Company of Philadelphia, et al., petitioners, vs. Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri. Petition for writ of certiorari and exhibit thereto. Filed —— —, 1926. File No. —.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1926

No. 601

ÆTNA INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ALLIANCE INSURANCE COMPANY OF PHILADELPHIA, et al., Petitioners,

vs.

BEN C. HYDE, Superintendent of the Insurance Department of the State of Missouri

ORDER ALLOWING CERTIORARI—Filed November 1, 1926

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.